



# San Diego County SHERIFF'S DEPARTMENT

2015-2321

## NOTICE OF PROPOSED DISCIPLINARY ACTION

TO: William D. Gore, Sheriff		DATE: June 16, 2016	
It is recommended that the following disciplinary action be administered to the below named employee:			
EMPLOYEE'S NAME:	Fernando Garcia	TITLE:	Deputy Sheriff - Detentions
DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED:	2.30 Failure to meet standards	2.46 Truthfulness	
RECOMMENDED DISCIPLINE:	Termination		
SECOND LEVEL SUPERVISOR:	Ruby Banks, Lieutenant - Detentions	DATE:	06/16/16
LIST PRIOR FORMAL DISCIPLINE WITHIN LAST FIVE YEARS WITH DATE	None		
I have been advised of the above charges and recommended discipline:			
EMPLOYEE'S SIGNATURE: x	<i>[Signature]</i>	DATE:	9/7/16
2 <sup>nd</sup> LEVEL SUPERVISOR SIGNATURE:	<i>[Signature]</i>	DATE:	9/7/16
3 <sup>rd</sup> LEVEL SUPERVISOR SIGNATURE:	<i>[Signature]</i>	DATE:	9/7/16
COMMENTS:			
REVIEWED BY INTERNAL AFFAIRS:	<i>[Signature]</i>	DATE:	9-12-16
4 <sup>th</sup> LEVEL SUPERVISOR SIGNATURE:	John Ingrassia, Commander Detentions	DATE:	9-20-16
COMMENTS:			
ADDITIONAL REVIEW:	Rich Miller, Assistant Sheriff	DATE:	12-20-16
ADDITIONAL REVIEW:	Mark P. Elvin, Undersheriff	DATE:	1-3-17
ADDITIONAL REVIEW:	William D. Gore, Sheriff	DATE:	1/3/17
INTERNAL AFFAIRS SECTION			
<input type="checkbox"/> WRITTEN REPRIMAND BY:		DATE:	
<input checked="" type="checkbox"/> NOTICE OF INTENT AND CHARGES:		DATE:	10-12-16
<input checked="" type="checkbox"/> ORDER SERVED: Sergeant A. Ortiz		DATE:	01-03-2017
<input checked="" type="checkbox"/> CIVIL SERVICE NOTIFIED: M. Alvarez, Admin Sec I		DATE:	01-03-2017
<input checked="" type="checkbox"/> PAYROLL NOTIFIED: M. Alvarez, Admin Sec I		DATE:	01-03-2017
FINAL ACTION TAKEN: SKELLY UPHELD: TERMINATION		DATE:	01-03-2017

RELEASED FROM  
I.A. FILES  
TO F.B.

## CIVIL SERVICE COMMISSION

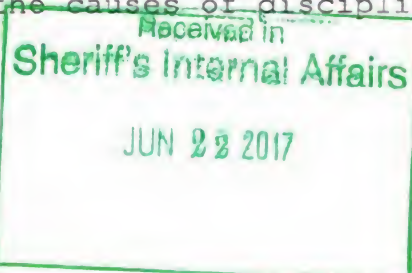
## COUNTY OF SAN DIEGO

In the Matter of the Appeal of )  
**Fernando Garcia (2017-004P)** from )  
An Order of Termination and ) FINDINGS, CONCLUSIONS  
Charges from the Sheriff's ) AND RECOMMENDATIONS  
Department )

The matter of the appeal of Fernando Garcia (2017-004P) (Employee), from an Order of Termination and Charges terminating him from the class and position of Deputy Sheriff - Detentions/Court Services (Class No. 5757) in the Sheriff's Department (Department), was presented to the Civil Service Commission. The Commission appointed Commissioner Ira Sharp to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed and came on for hearing on May 1, 2017.

The following were present at the hearing: Ira Sharp, Hearing Officer; Thomas Harron, Esq., Legal Advisor, and Todd Adams, Executive Officer, assisting the Hearing Officer; Fernando Garcia, Appellant, on his own behalf and as represented by Edward Southcott, Esq.; Sanford Toyen, Esq., assisted by Sergeant Jill Farris and Anisa Gouveia, Paralegal, representing the Appointing Authority.

The official file of the proceedings shows that the Order of Termination and Charges was dated December 23, 2016, signed by William D. Gore, Sheriff, and that the causes of discipline were:





1 **CAUSE I**

2 You are guilty of dishonesty as set forth under Section 7.2(d) of Civil Service  
3 Rule VII as it relates to Sheriff's Policy and Procedure Section **2.46 –**  
4 **Truthfulness** in that: On March 3, 2016, you failed to answer a supervisor's  
5 questions truthfully and to the fullest extent of your knowledge when you told  
6 Sergeant Jill Farris and Sergeant Ken Jones that you did not see your partner,  
[REDACTED], use his jail issued key to strike an inmate's hand. During  
a second interview with Internal Affairs on March 9, 2016, you admitted you  
had seen [REDACTED] strike the inmate with a key.

7 **CAUSE II**

8 You are guilty of incompetency as set forth under Section 7.2(a) of Civil  
9 Service Rule VII as it relates to Sheriff's Policy and Procedure Section **2.30 –**  
10 **Failure to Meet Standards**, in that: On December 16, 2015, after you  
11 witnessed Deputy [REDACTED] use his jail issued key as an impact weapon,  
12 which injured inmate [REDACTED], you failed to report the incident to a  
13 supervisor or provide the inmate with medical attention. You failed as an  
14 employee to take appropriate action on the occasion of jail incident requiring  
15 staff intervention and therefore did not act in accordance with established  
16 departmental procedures.

17 **CAUSE III**

18 You are guilty of acts which are incompatible with and/or inimical to the public  
19 service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil  
20 Service Commission of the County of San Diego. You are guilty of acts, which  
21 are incompatible with the **San Diego County Sheriff's Department Executive**  
22 **Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting  
23 such acts is inimical to the public service is that set forth under Causes I and II  
24 above.

25 **Applicable Rules:**

26 Civil Service Rule 7.2 (d) regarding dishonesty.

27 Civil Service Rule 7.2 (a) regarding incompetency.

28 Civil Service Rule 7.2 (s) regarding acts which are  
incompatible with and/or inimical to the public service.

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Undisputed Evidence:

Employee is a 23-plus year employee of the Department with no prior discipline. On December 16, 2015 he saw his partner hit an inmate's hand with a large, heavy key while they were exchanging laundry through the food flap in the inmate's cell. The inmate is mentally challenged and may not have understood the procedure. He was emptying trash out of the cell when Employee's partner was placing new clothing into the cell.

The inmate suffered a minor injury to the back of his hand. There was a small bruise and scab, which indicated that there may have been some bleeding. The inmate did not make a complaint and declined any medical attention.

Employee looked back into the cell twice to check on the inmate immediately after the incident. Employee failed to report the incident but did mention it to another deputy, who had asked him how things were going with his partner. This deputy subsequently mentioned the incident to his lieutenant in a casual conversation shortly thereafter. The lieutenant viewed the videotape and referred the matter to Internal Affairs ("IA").

Employee's first interview with IA was three months after the incident. After reviewing the video, he originally said that he didn't recall the incident or any conversation about the incident with another deputy. Later after reviewing the video again, he said that he saw his partner "tapping" something with his key and that he may have said something to another deputy. During a second interview, Employee said that



1 he saw the incident and that his partner was wrong to have done  
2 it.

3 **Disputed Evidence:**

4 Department contends that Employee had a duty to report  
5 this incident and was not truthful in his answers to IA. He  
6 had an opportunity to review the video and could clearly see  
7 himself watching as his partner struck the inmate with the key.  
8 He was obviously concerned because he looked back twice to see  
9 the condition of the inmate. Employee wouldn't have mentioned  
10 this to another deputy if he thought his partner had just been  
11 tapping on something with the key.

12 Employee pointed to his long career and his reputation for  
13 honesty. He stated that his recollection had faded in the  
14 three months between the incident and the IA interview. He  
15 wanted to be cautious before saying anything that could ruin a  
16 fellow deputy's career. He testified that subsequent review of  
17 the video along with time to recollect the incident aided his  
18 memory to the point that he recalled the use of force.

19 Employee argued that he made a mistake but a single  
20 incident should not outweigh a long-earned reputation for  
21 honesty.

22 **FINDINGS OF FACT**

23 Employee's testimony about his faded recollection is not  
24 persuasive in this instance because the video, which he had a  
25 chance to review, is so clear as to what occurred. A deputy  
26 should remember an incident of excessive force like this. He  
27 is trained in his observation skills. Employee was looking  
28 directly at his partner when he hit the inmate and Employee was

1 concerned enough to glance back twice to check on the inmate  
2 immediately thereafter.

3 The fact that Employee thought that this was significant  
4 enough to tell another deputy about it shows that he knew it  
5 was wrong.

6 It is unfortunate that Employee was put in this position  
7 by his partner but Employee had a duty to report this and to be  
8 forthright with IA when questioned about this incident. He had  
9 to tell IA what he had told the other deputy to whom he related  
10 this incident.

#### 11 DISCUSSION OF CAUSES

12 Cause I: The evidence supports a violation of Civil  
13 Service Rule 7.2(d), dishonesty. Employee failed to answer  
14 questions to the fullest extent of his knowledge regarding the  
15 incident where his partner struck an inmate with his key.

16 Cause II: The evidence supports a violation of Civil  
17 Service Rule 7.2(a), incompetency. Employee failed to meet  
18 Department standards when he did not report an incident where a  
19 deputy struck an inmate with a key.

20 Cause III: The evidence supports a violation of Civil  
21 Service Rule 7.2(s), acts which are incompatible with and/or  
22 inimical to the public service. Employee's dishonesty and  
23 failure to report the incident where his partner struck an  
24 inmate with a key are incompatible with his duties as a deputy.

#### 25 CONCLUSIONS

26 The Department has proven that Employee was dishonest in  
27 that he did not answer IA's questions to the fullest extent of  
28 the truth.



1 The Department has proven that Employee was incompetent in  
2 that he failed to meet the standards of the Department to  
3 report excessive use of force.

4 The Department has proven that Employee's acts were  
5 incompatible with and/or inimical to the public service in that  
6 his dishonesty and failure to report the excessive use of force  
7 are incompatible with his duties as a deputy.

8 **LEVEL OF DISCIPLINE**

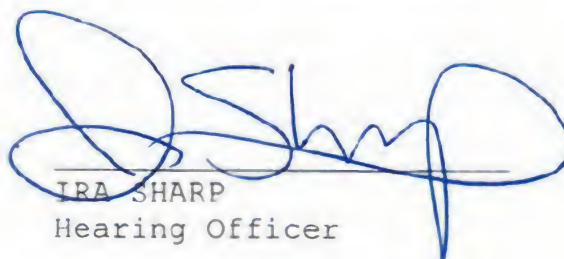
9 Employee has had no prior disciplinary action taken  
10 against him. Nevertheless, truthfulness is a core value for  
11 the Department. Department is reasonable in its position that  
12 it has no options other than termination when there is a  
13 failure of truthfulness because it taints everything the deputy  
14 does: testimony, reports, behavior, etc. For that reason,  
15 termination is appropriate in this case.

16 **RECOMMENDATIONS**

17 Based on the findings and conclusions set forth above, I  
18 hereby recommend the following decision:

- 19 1. That the Order of Termination be affirmed; and  
20 2. That the proposed decision shall become effective  
21 upon the date of approval by the Civil Service Commission.

22  
23  
24 Dated: June 21, 2017

25   
IRA SHARP  
Hearing Officer

26  
27 S:\Civil\CASE FILES\2017\Rule VII\Garcia, Fernando\Reports\Garcia.VII.BOILER.doc  
28

1 CIVIL SERVICE COMMISSION

2 COUNTY OF SAN DIEGO

3  
4 In the Matter of the Appeal of )  
5 **Fernando Garcia (2017-004P)** ) DECISION  
6 from an Order of Termination )  
7 and Charges from the Sheriff's )  
8 Department )

9 The matter of the appeal of Fernando Garcia (2017-004P)  
10 (Employee), from an Order of Termination and Charges  
11 terminating him from the class and position of Deputy Sheriff -  
12 Detentions/Court Services (Class No. 5757) in the Sheriff's  
13 Department (Department), was presented to the Civil Service  
14 Commission. The Commission appointed Commissioner Ira Sharp to  
15 hear the appeal and submit findings, conclusions, and  
16 recommendations to the Civil Service Commission. Thereafter,  
17 the matter was duly noticed and came on for hearing on May 1,  
18 2017.

19 The Hearing Officer has reported back to the Commission  
20 his Findings and Recommendations; and a Proposed Decision, a  
21 copy of which is attached hereto and incorporated herein, and  
22 the Commission hereby adopts and approves the Findings and  
23 Recommendations; and Proposed Decision that the Hearing Officer  
24 has submitted.

25 ACCORDINGLY, IT IS ORDERED:

26 1. That the Department's Order of Termination be  
27 affirmed; and

28 2. That the proposed decision shall become effective  
upon the date of approval by the Civil Service Commission.



3. Any exhibit introduced in this proceeding may be returned to the party to whom it belongs at any time after the effective date of this Decision and the expiration of the time provided for judicial review which is governed by Code of Civil Procedure Section 1094.6 as more fully set forth below under the paragraph entitled "Notice." The party seeking return of the exhibits shall file with this Commission a written request for the return of the exhibits accompanied by proof of mailing a copy thereof to the other party, who may have ten (10) days from the date of mailing to object to the return of said exhibit(s). If no objection is filed, the Executive Officer of the Commission may return the exhibit(s) to the party requesting it.

4. Upon approval of this Decision, a copy thereof, together with the Findings and Recommendations and Proposed Decision incorporated by reference, be served on the parties and their representatives.

## NOTICE

The time within which judicial review of this decision must be sought is governed by the Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by Civil Service Rule VII, Section 7.13(f). Any petition or other papers seeking judicial review must be filed in the appropriate court not later than the ninetieth (90<sup>th</sup>) day following the date on which this decision becomes final. However, if within ten (10) days after this decision becomes final, a request for the record of the proceedings is filed,

1 the time within which such petition may be filed in court is  
2 extended to not later than the thirtieth (30<sup>th</sup>) day following  
3 the date on which the record is personally delivered or mailed  
4 to the party, or his attorney of record. A written request for  
5 the preparation of the record of proceedings shall be filed  
6 with the Executive Officer of the Civil Service Commission of  
7 San Diego County, 1600 Pacific Highway, San Diego, California  
8 92101. A deposit sufficient to cover the estimated cost of  
9 preparation of such record shall be filed with the written  
10 request for the record of the proceedings.

11 Approved by the Civil Service Commission on the 21<sup>st</sup> day of  
12 June, 2017.

13  
14 AYES: HRADECKY, CASILLAS, SHARP, BAILEY, NELSON

15 NOES: NONE

16 ABSENT: NONE

17 ABSTENTIONS: NONE  
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# COUNTY OF SAN DIEGO

## INTER-DEPARTMENTAL CORRESPONDENCE

### REFERRAL

January 19, 2017

TO: Jennifer Lawson, Sheriff's Employee Relations Manager  
Sheriff's Department

FROM: Selinda Hurtado-Miller, Commission Analyst I  
Civil Service Commission

SUBJECT: Referral – **Fernando Garcia/Termination**

Enclosed is a copy of an appeal filed by Fernando Garcia, former Deputy Sheriff/Detentions Court Services. Also enclosed is a statement from Mr. Garcia, explaining why his appeal (received on January 17, 2017) was untimely. His appeal should have been received by our office on or before January 13, 2017. Please provide input from the Sheriff's Department regarding his request for an (untimely) appeal.

Please respond by January 26, 2017. Thank you.

Encs.

January 17, 2017

RECEIVED

JAN 17 2017

TO: Civil Service Commission

CIVIL SERVICE  
COMMISSION

FROM: Fernando Garcia

I, Fernando Garcia, request via this letter to appeal the decision of termination which was determined on January 3, 2017 through the Skelly Conference which was conducted on November 17, 2016- Case #2015-232.1. Thank you in advance for your help.

Sincerely,

  
Fernando Garcia

[Redacted]



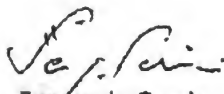
January 18, 2017

TO: Civil Service Commission

From: Fernando Garcia

The reason I filed for an appeal couple of days late was because I was with the assumption that weekends and holidays didn't count. I thought that the 10 calendar days were actually working days. I sincerely apologize for filling my appeal after the due date.

Sincerely,



Fernando Garcia

[REDACTED]

FROM THE OFFICE OF

**INTERNAL AFFAIRS – CONFIDENTIAL**

January 3, 2017

IA# 2015-232.1

TO: Civil Service Commission

FROM: Jeffrey S. Duckworth, Lieutenant  
Internal Affairs Unit

**ORDER OF TERMINATION AND CHARGES – Fernando Garcia**

The Order of Termination and Charges dated 12/23/2016 filed against Fernando Garcia has been received by the Civil Service Commission on: \_\_\_\_\_

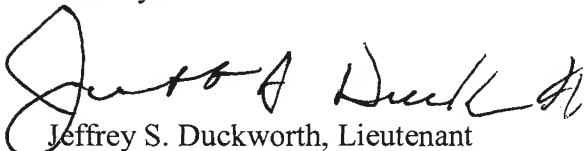
Date

Commission Response:

- ☐ The above individual **HAS** appealed the Order of Termination and Charges.
- ☐ The above individual **HAS NOT** appealed the Order of Termination and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.



Jeffrey S. Duckworth, Lieutenant  
Internal Affairs Unit  
(858) 974-2065

Attachment



## RECEIPT OF MATERIALS

**EMPLOYEE: Fernando Garcia #5713 / 016917**

**Case # 2015-232.1**

[illegible]





## RECEIPT OF MATERIALS

EMPLOYEE: Fernando Garcia #5713 / 016917  
Case # 2015-232.1

DESCRIPTION OF DOCUMENT	EMPLOYEE RECEIVED (DATE & INITIAL)	APPOINTING AUTHORITY (Date & Sign)
Notice of Proposed Disciplinary Action to Fernando Garcia dated 09-07-2016	10-12-16 [Signature]	10-12-16 [Signature]
Notice of Intent of Termination and Charges to Fernando Garcia dated 09-20-2016		
Discipline Recommendation & Rationale from Lieutenant-Detentions R. Banks to Sheriff Gore dated 06-10-2016 and attachment		
Investigative Reports by Sergeant-Detentions J. Farris dated 04-25-2016 and attachments		
Skelly Conference Letter to Fernando Garcia		
Order Not to Disclose Materials to Fernando Garcia		
Declaration/Acknowledgement of Personal Service		
Two (2) CD-RS		

Lorenz, Peggi

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**From:** Alvarez, Monica  
**Sent:** Tuesday, January 03, 2017 2:31 PM  
**To:** Miller, Rich; Hernandez, Mike; Duke, Billy; Lawson, Jennifer; Dangca, Liza; Curran, Timothy; Callewaert, Peter; Duckworth, Jeff; Bovet, James; Alvarado, Michael; Bryant, English; Faigin, Robert  
**Cc:** Lorenz, Peggi  
**Subject:** Termination of Deputy Detentions/Ctsvc Fernando Garcia 016917/5713

Effective January 3, 2017, Deputy-Detentions/Ctsvc Fernandez Garcia has been terminated from the Sheriff's Department and County Service.

*Monica Alvarez, Admin Sec I  
San Diego Sheriff's Dept. - Internal Affairs  
9621 Ridgehaven Court  
San Diego, CA 92123  
858-974-2065  
Fax 858-974-2077*

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

Lorenz, Peggi

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**From:** PSHRP-11g@sdcounty.ca.gov  
**Sent:** Tuesday, January 03, 2017 3:43 PM  
**To:** Medical, Liaison; Soriano, Venus; Duckworth, Jeff; Medina, Jennifer - Sheriff; Delozier, Michele; Peters, Nicholas; Lorenz, Peggi  
**Subject:** Dept. ID - 39435 Employee - Fernando G Garcia

The following employee has terminated/retired:

Name: Fernando G Garcia  
Employee ID: 016917  
Employee Record Number: 0  
Job Description: Dep Sheriff - Detentions/CtSvc  
Effective Date: 01/04/2017

Please retrieve all County owned property from this employee. You have a PeopleSoft Worklist waiting for you.

Code: XXXXXXXXXX

IF YOU ARE RECEIVING THIS MESSAGE IN ERROR: please reply to this message with:

- 1) Your Name
- 2) Business Unit
- 3) Who should be receiving this message instead of you.





# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



*William D. Gore, Sheriff*

December 23, 2016

Fernando Garcia  
[REDACTED]

Dear Deputy-Detentions/Ctsvc Garcia:

## **ORDER OF TERMINATION AND CHARGES, IA #2015-232.1**

I hereby order that you be terminated from your position as a Deputy Sheriff-Detentions/Court Services (Class #5757) in the Sheriff's Department and the Classified Service of the County of San Diego, for each and all of the following causes:

### **CAUSE I**

You are guilty of dishonesty as set forth under Section 7.2(d) of Civil Service Rule VII as it relates to Sheriff's Policy and Procedure Section **2.46 – Truthfulness** in that: On March 3, 2016, you failed to answer a supervisor's questions truthfully and to the fullest extent of your knowledge when you told Sergeant Jill Farris and Sergeant Ken Jones that you did not see your partner, Deputy [REDACTED], use his jail issued key to strike an inmate's hand. During a second interview with Internal Affairs on March 9, 2016, you admitted you had seen [REDACTED] strike the inmate with a key.

### **CAUSE II**

You are guilty of incompetency as set forth under Section 7.2(a) of Civil Service Rule VII as it relates to Sheriff's Policy and Procedure Section **2.30 – Failure to Meet Standards**, in that: On December 16, 2015, after you witnessed Deputy [REDACTED] use his jail issued key as an impact weapon, which injured inmate [REDACTED], you failed to report the incident to a supervisor or provide the inmate with medical attention. You failed as an employee to take appropriate action on the occasion of jail incident requiring staff intervention and therefore did not act in accordance with established departmental procedures.

**RELEASED FROM  
I.A. FILES  
TO**

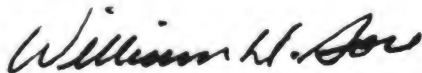
**CAUSE III**

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts is inimical to the public service is that set forth under Causes I and II above.

Your attention is directed to Sections 904.1, 904.2, 909, 909.1, 910.1(k), and 910 (k)(l) of the Charter of the County of San Diego and Rule VII of the Civil Services Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, **you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you.**

Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) calendar day period. An appeal is not valid unless it is actually received by the Commission within such ten (10) calendar day period. **A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) calendar day period.**

Sincerely,



William D. Gore, Sheriff

WDG:ao

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I.A. FILES  
TO FS

FROM THE OFFICE OF

## INTERNAL AFFAIRS – CONFIDENTIAL

### DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of \_\_\_\_\_, California and that I served the

- ☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**
- ☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**
- ☐ **NOTICE OF INTENT OF DEMOTION AND CHARGES**
- ☐ **NOTICE OF INTENT OF SUSPENSION, REASSIGNMENT AND CHARGES**
  
- ☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **ORDER OF SUSPENSION AND CHARGES**
- ☒ **ORDER OF TERMINATION AND CHARGES**
- ☐ **ORDER OF DEMOTION AND CHARGES**
- ☐ **ORDER OF REASSIGNMENT AND CHARGES**

of which a true copy is attached hereto, by delivering a copy thereof to

FERNANDO GARCIA personally at INTERNAL AFFAIRS on  
JANUARY 3, 2017.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 3 day of JANUARY, 2017, at SAN DIEGO, California.

[Signature]  
Signature of person making personal service

---

### ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 3 day of JANUARY, 2017.

SIGNED [Signature]

IA# 2015-232.1

Released from I.A. Files

To: [Signature]





# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



*William D. Gore, Sheriff*

September 20, 2016

Fernando Garcia  
[REDACTED]  
[REDACTED]

Dear Deputy-Detentions/Ctsvc Fernando Garcia:

## **NOTICE OF INTENT OF TERMINATION AND CHARGES, IA #2015-232.1**

Please take notice that it is my intention to recommend to the Sheriff that you be terminated from your position as a Deputy Sheriff-Detentions/Court Services (Class #5757) in the Sheriff's Department and the Classified Service of the County of San Diego, for each and all of the following causes:

### **CAUSE I**

You are guilty of dishonesty as set forth under Section 7.2(d) of Civil Service Rule VII as it relates to Sheriff's Policy and Procedure Section **2.46 – Truthfulness** in that: On March 3, 2016, you failed to answer a supervisor's questions truthfully and to the fullest extent of your knowledge when you told Sergeant Jill Farris and Sergeant Ken Jones that you did not see your partner, Deputy [REDACTED], use his jail issued key to strike an inmate's hand. During a second interview with Internal Affairs on March 9, 2016, you admitted you had seen Deputy [REDACTED] strike the inmate with a key.

### **CAUSE II**

You are guilty of incompetency as set forth under Section 7.2(a) of Civil Service Rule VII as it relates to Sheriff's Policy and Procedure Section **2.30 – Failure to Meet Standards**, in that: On December 16, 2015, after you witnessed Deputy [REDACTED] use his jail issued key as an impact weapon, which injured inmate [REDACTED] you failed to report the incident to a supervisor or provide the inmate with medical attention. You failed as an employee to take appropriate action on the occasion of jail incident requiring staff intervention and therefore did not act in accordance with established departmental procedures.

**RELEASED FROM  
I.A. FILES  
TO F. G.**

### CAUSE III

You are guilty of acts which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts is inimical to the public service is that set forth under Causes I and II above.

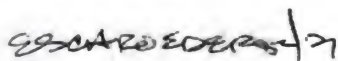
You have **five (5)** regular business days to request a Skelly Conference. You may respond either orally, in writing, or both, regarding the above proposed charges and discipline. Your response will be considered by the Sheriff before final action is initiated. Upon receipt of this notice you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact the Internal Affairs Unit.

You have until 4:30 p.m. on October 18, 2016 to contact Internal Affairs at (858) 974-2065, if you wish to respond to the above charges and discipline. Internal Affairs will provide you the name of a Skelly Officer, whom you should contact without delay, as the conference must be held within ten (10) days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately.

If you fail to respond, or if your response is unsatisfactory, an Order of Termination and Charges will be served upon you and the discipline initiated.

Sincerely,

**WILLIAM D. GORE, SHERIFF**



E. Schroeder, Captain-Detentions  
Vista Detention Facility

WDG:ES:jf

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FROM THE OFFICE OF

## INTERNAL AFFAIRS – CONFIDENTIAL

### DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**

☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**

☒ **NOTICE OF INTENT TO TERMINATE AND CHARGES**

☐ **NOTICE OF INTENT OF DEMOTION AND CHARGES**

☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**

☐ **ORDER OF SUSPENSION AND CHARGES**

☐ **ORDER OF TERMINATION AND CHARGES**

☐ **ORDER OF DEMOTION AND CHARGES**

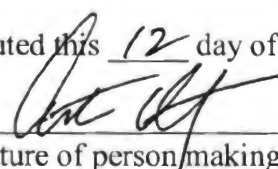
☐ **NOTICE REGARDING RESTRAINING ORDER DATED**  
\_\_\_\_\_

of which a true copy is attached hereto, by delivering a copy thereof to

FERNANDO GARCIA personally at INTERNAL AFFAIRS on  
OCTOBER 12, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

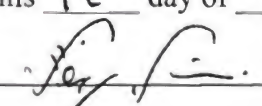
Executed this 12 day of OCTOBER, 2016, at SAN DIEGO, California.

  
\_\_\_\_\_  
Signature of person making personal service

### ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 12 day of OCT., 2016.

SIGNED  \_\_\_\_\_

IA# 2015-232.1

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To: F.G.





## COUNTY OF SAN DIEGO

### INTER-DEPARTMENTAL CORRESPONDENCE

December 14, 2016

TO: William D. Gore, Sheriff

FROM: Daniel Pena, Detention Captain  
Rock Mountain Detention Facility

VIA: Chain of Command

#### **SKELLY CONFERENCE – DEPUTY SHERIFF- DETENTION/COURT SERVICE FERNANDO G. GARCIA #5713 – INTERNAL AFFAIRS CASE #2015-232.1**

#### SYNOPSIS / COMMAND RECOMMENDATION

Fernando Garcia, Deputy Sheriff–Detention/Court Service, assigned to the Vista Detention Facility (VDF), is the accused employee to the above-referenced Internal Affairs (IA) investigation. This case examined the allegation Deputy Garcia failed to answer supervisor's questions truthfully and to the fullest extent of his knowledge when he initially said he did not witness [REDACTED], VDF Deputy Sheriff-Detention/Court Service, use the pointed edge of his jail-issued keys to strike an inmate's hand. During a subsequent interview with IA investigators, Deputy Garcia gained clarity and admitted to witnessing Deputy [REDACTED] strike the inmate's hand. The investigation also explored allegations Deputy Garcia failed to report the use of force incident to a supervisor and seek out and provide medical treatment to the inmate.

Sergeant-Detentions Jill Farris conducted the IA investigation which resulted in sustained findings against Deputy Garcia; including Rules of Conduct sections 2.30-Failure to Meet Standards and 2.46 Truthfulness.

On June 10, 2016, VDF Lieutenant-Detentions Ruby Banks conducted a pre-disciplinary meeting with Deputy Garcia and his employee representative, Luis Rios, Deputy Sheriff-Detention/Court Service. Lieutenant Banks recommended Deputy Garcia's employment with the Sheriff's Department be terminated.

#### CONDUCT OF SKELLY CONFERENCE

On October 24, 2016, Internal Affairs advised me I was assigned as the Skelly Officer to this case. On October 25, 2016, I contacted Deputy Garcia, who did not obtain legal representation but would be accompanied by Deputy Rios, his employee representative.

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By mutual agreement, the Skelly Conference was scheduled for November 17, 2016 at 1400 hours. The meeting was held in the Internal Affairs conference room at the John F. Duffy Administrative Center at 9621 Ridgehaven Court, San Diego. I recorded the conference and transferred the audio recording to a writable compact disc which is attached to this report.

During the Skelly Conference, Deputy Garcia acknowledged the investigation charges and the proposed disciplinary recommendation of termination. Deputy Garcia confirmed IA had provided him with a copy of the completed investigation and related documents. Deputy Garcia reviewed the investigation and supporting documents and listened to the audio recordings prior to the conference. When asked, Deputy Garcia said he was being represented by the employee representative of his choice and had no objection to me serving as his Skelly Officer. Deputy Garcia acknowledged, as part of my review, I would be granted access to review his personnel files. Deputy Garcia did not provide me with any additional documentation during the conference.

Deputy Garcia said he has been employed with the Sheriff's Department for 24 years and this was his first "IA" related to the performance of his duties. [REDACTED]

[REDACTED] Deputy Garcia described how inmates and peers respected him and the manner in which he performed his duties. Deputy Garcia described an incident where he received accolades from a captain due to his response to an in-custody death. Deputy Garcia feels that in his case; the recommended discipline of termination is severe.

Deputy Garcia accepted responsibility for not intervening when Deputy [REDACTED] struck the inmate's hand with jail keys. Deputy Garcia agreed with Sergeant Farris that he should have kept his partner "in check" because he was a senior deputy. However, Deputy Garcia did not agree he was untruthful or evasive in his answers to IA investigators. Deputy Garcia said his first interview with IA investigators was "pretty bad" and he felt "clueless and under pressure." Deputy Garcia felt "under duress" by what he described as insistent questions from IA Sergeant Tejada. Deputy Garcia metaphorically described the intent of his limited answers to IA investigators,

"I didn't want to say more the first time...because if the fire's here...if I say the whole house was on fire...which was probably half of the house...now you (sic) putting more into the situation."

Deputy Garcia said he did not want to overstate what he observed and give investigators false accusations. Deputy Garcia said he does not condone Deputy [REDACTED] actions. Deputy Garcia said he was confused about the allegations he was charged with and initially thought he was being accused of using force on the inmate. Deputy Garcia accepts responsibility for not talking to Deputy [REDACTED] about the incident or reporting it to supervisors.

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According to the investigation, Deputy Garcia told Deputy Womble he observed Deputy [REDACTED] use jail keys to strike an inmate's hands. At some point following this conversation, Deputy Womble reported the incident to Lieutenant McNeeley. The IA investigation was later initiated.

During the Skelly Conference, Deputy Garcia said Deputy Womble should have told him he was going to inform Lieutenant McNeeley. According to Deputy Garcia, Deputy Womble waited three days before informing Lieutenant McNeeley and during that time could have told him (Deputy Garcia) to report the matter to a supervisor. Deputy Garcia said Deputy Womble jumped the chain of command by not reporting it to the team sergeants. Deputy Garcia did not believe Deputy Womble's actions were in line with how the department claims to act as a "family."

Deputy Garcia suggested Deputy Womble may have something against him but did not explain this assertion any further. Deputy Garcia said Deputy Womble should have "kept him (Garcia) in check" by telling him what to do rather than report the incident to Lieutenant McNeeley. Deputy Garcia said if Deputy Womble explained the seriousness of the matter to him; he (Garcia) would have told Deputy [REDACTED] to report the incident to a supervisor. Deputy Garcia said the incident "went over his head" and Deputy Womble could have given him some guidance. I asked Deputy Garcia to explain what he meant when he said the incident went "over his head."

"I didn't take it (the use of force) seriously. When I looked inside the cell I didn't see no (sic) blood."

Deputy Garcia did not know how Deputy Womble came to the conclusion the inmate's hands were injured as he reported to IA investigators. Deputy Garcia denied telling Deputy Womble he observed "broken skin" or blood. Deputy Garcia said he visually checked the inmate several times and saw no blood. Deputy Garcia said he harbors resentment toward Deputy Womble for not giving him (Garcia) the opportunity to tell Deputy [REDACTED] to report the incident to supervision. Deputy Garcia feels the situation is sad because he is fighting to keep his employment because of the actions of another deputy [REDACTED].

Deputy Garcia's employee representative, Deputy Rios, said the use of force incident would have not surfaced if Deputy Garcia did not discuss it with Deputy Womble. Deputy Rios said Deputy Womble should have told Deputy Garcia to report the incident to a supervisor rather than doing so himself. Deputy Rios said Deputy Garcia was confused and under pressure during his first interview. Deputy Garcia said he admittedly described Deputy [REDACTED] striking motions as "tapping" during his interview but claims he was not attempting to be untruthful.

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## DISCUSSION

As part of my review, I reviewed Deputy Garcia's disciplinary history and confirmed he has no related prior discipline. I contacted Sheriff's Personnel and VDF and was granted access to review Deputy Garcia's department and station personnel files. On November 28, 2016, I reviewed Deputy Garcia's Employee Performance Reports (EPR). His work history ratings consistently indicate Deputy Garcia's performance throughout his career has been at the "Meets Expectations" or "Fully Competent" levels. I found Deputy Garcia personable and genuine in his conviction of enjoying his work as a detention deputy.

## CONCLUSION

Throughout the investigation and disciplinary proceedings, Deputy Garcia refused to accept full responsibility for not reporting the use of force to a supervisor. Deputy Garcia instead tried to shift the blame and responsibility to Deputy Womble who, in turn, reported the incident. During the Skelly Conference, Deputy Garcia repeatedly said he is a veteran Deputy Sheriff with 24 years of experience but then blamed Deputy Womble, a much junior deputy, for not instructing him to inform a supervisor about what he observed. I did not accept Deputy Garcia's blame shifting as a mitigating circumstance.

By not answering IA investigator's questions truthfully and to the fullest extent of his knowledge, Deputy Garcia violated the trust of the department and citizens he serves. The testimonies of Deputy Sheriffs, proven to be dishonest during the performance of their duties, are considered "Brady" material because of a 1963 U.S. Supreme Court case (Brady v. Maryland). This decision constitutionally requires prosecutors to turn over all favorable, material evidence to the defense. This includes evidence of police dishonesty such as lying in an official proceeding, falsifying evidence or excessive use of force. The defense can then use the information to impeach a Deputy Sheriff's testimony, permanently damaging the deputy's credibility.

I truly understand Deputy Garcia's apprehension about the recommended disciplinary action of termination. However, given the implications associated with Deputy Garcia's failure to be truthful; the highest level administrative penalty is appropriate. Deputy Garcia's dishonest misconduct failed to meet the most basic of expectations of a Deputy Sheriff. Deputy Sheriffs must always be honest in the performance of their duties.

It should be emphasized that the Skelly Officer's responsibility is not to substitute his/her judgment with respect to the discipline to be imposed, but rather reach a conclusion as to whether there are reasonable grounds to justify the discipline proposed. Based on the evidence and facts of the investigation and the seriousness of the violations, there are

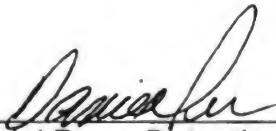
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reasonable grounds to support the recommended discipline. I find the proposed level of discipline is commensurate and expected in response to a violation of truthfulness.

RECOMMENDATION

I recommend the proposed discipline of TERMINATION is affirmed.



Daniel Pena, Detention Captain  
Rock Mountain Detention Facility

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J. Ingrassia, Commander  
Detention Service Bureau

(☒) Approve ( ) Disapprove

Date: 12-20-16

Comments: \_\_\_\_\_

\_\_\_\_\_

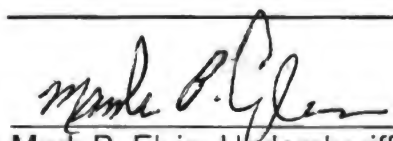
  
Rich Miller, Assistant Sheriff  
Detention Service Bureau

(☒) Approve ( ) Disapprove

Date: 12-20-16

Comments: \_\_\_\_\_

\_\_\_\_\_

  
Mark P. Elvin, Undersheriff

(☒) Approve ( ) Disapprove

Date: 1-3-17

Comments: \_\_\_\_\_

\_\_\_\_\_

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William D. Gore, Sheriff

(☒) Approve ( ) Disapprove

Date: 1/3/17

Comments: \_\_\_\_\_

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# COUNTY OF SAN DIEGO

## INTER-DEPARTMENTAL CORRESPONDENCE

June 10, 2016

TO: William D. Gore, Sheriff

FROM: R. Banks, Lieutenant-Detentions  
Vista Detention Facility

VIA: Chain of Command

Disciplinary Recommendation and Rationale for Deputy Fernando Garcia I.A. Case #2015-232.1

### Recommendation:

I have read the investigative reports prepared by Sergeant Farris. Sergeant Farris found Deputy Garcia in violation of Department Policy and Procedures sections:

- 2.30 Failure to meet standards as it relates to addendum F
- 2.46 Truthfulness

I agree with her findings and conclusions. Based upon the nature of the conduct and after weighing the factors of mitigation and aggravation, I recommend that Deputy Garcia be terminated.

### Rationale:

I found Sergeant Farris' investigation to be thorough, fair, and unbiased. Deputy Garcia initially tried to avoid stating what had happened but eventually admitted that he saw Deputy [REDACTED] use a jail key to hit an inmate's hand causing an injury that went untreated for several days. Misconduct did occur. The Departmental Rules of Conduct with regard to these allegations are clear and understandable. The facts in this case are not in dispute.

Deputy [REDACTED] injured an inmate with an unreasonable use of force, did not report it and did not seek treatment for the injury. Deputy Garcia observed the incident and did not report it to any supervisor, seek treatment for the inmate or challenge Deputy [REDACTED]. Instead, Deputy Garcia discussed the incident with another deputy who felt the incident needed to be reported to a supervisor. Deputy Garcia believes this deputy should have told him he was reporting it to a supervisor. A deputy with his experience is expected to follow policy and procedures and be cognizant enough of the situation to know when an inmate sustains an injury; one of his peers uses force; and when an incident is to be reported.

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During his investigative interview he failed to disclose what he saw and could not remember something that was so upsetting to him just over two months earlier that he told another deputy that he thought it was wrong. Once he was pressed on the facts he admitted to seeing the incident. A deputy sheriff should never have to be pressed for the truth.

Deputy Garcia has one prior violation for unbecoming conduct off duty and he received a written reprimand.

On June 10, 2016, at 1545 hours, I met with Deputy Garcia #5713 in the Internal Affairs conference room at the John F. Duffy Administrative Center at 9621 Ridgehaven Court, San Diego, CA 92123. Deputy Garcia attended the meeting with his representative, Deputy Luis Rios #4210.

Prior to going on record Deputy Garcia was given the opportunity to review the report with his representative. He was provided the time to complete this. When he had finished, I met with both Deputies Garcia and Rios, on digital recording, where I addressed the issue of mitigation. I explained this was the time for him to provide information not already covered in the investigation which could impact the findings in the case and to offer any mitigating factors that could impact the recommendation of discipline.

Deputy Garcia had no questions and had nothing to add which would have any impact on the findings.

In mitigation, Deputy Rios on Deputy Garcia's behalf provided some information. He advised that although Deputy Garcia did not report what he saw to his supervisor, he did report it to someone, referencing his discussion of the incident with Deputy Womble. He was not sure if it rose to the level of reporting to a supervisor so he had gone to Deputy Womble for guidance and because Womble did not say that he should take it to a supervisor, he felt that was the end of the incident. Deputy Garcia stated he went to Deputy Womble because they are both administrative segregation housing deputies and he felt Deputy Womble would give him some guidance if he felt there was more to be done. Deputy Garcia is not sure what he said that day to Deputy Womble but he knows it was not a big discussion and Deputy Womble just walked away. Deputy Womble never suggested, to him, they go to talk to Deputy [REDACTED] or to the supervisor. Deputy Womble did not report it for three or four days.

Deputy Garcia advised he has been a deputy for almost twenty-four years and had no other "in-house IA complaint." [REDACTED]  
[REDACTED]

Deputy Garcia then referenced his time on the department and he feels he is, "Mature enough" to report any incidents. He feels this incident probably, "Went over his head." He did not remember the incident at his first interview but when he went home he thought more about it and then when he was re-interviewed he was able to see the video and what he was doing at the time so his memory became clearer. He feels because the incident was two months earlier and he was

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working nightshift, he was unclear on the incident and he was not trying to be untruthful during the interview.

He then went on to say during his career of almost twenty four years he has never been "I.A.'d" over his work. He never "even" abused any inmates. He stated his reputation is, "Highly." I believe he meant he is highly respected by the inmates as he went on to say the inmates in court holding have said, "He is the best deputy." He stated he goes out of his way to provide for the inmates, per title 15. He advised I could contact any inmate throughout Vista Detention Facility and he has a good reputation. He also believes he has a good reputation with staff.

He believes he should continue with his job and deserves only a, "Slap on the wrist."

I considered these factors prior to arriving at my recommendation.

In considering factors in aggravation, I considered the severity and ramifications of the incident.

Deputy Garcia, during the pre-disciplinary hearing, talked about Deputy Womble and what he should have done after their discussion, which is not a factor of mitigation. In fact it seemed he was trying to blame Deputy Womble for his predicament. Deputy Garcia was the only person who witnessed the incident and should have reported it. He has not apologized for his behavior. He then lied to the investigating sergeants when he was asked about what he had seen.

Deputy Garcia's actions violated most of the standards established in the Core Values Statement of the San Diego County Sheriff's Department. His behavior had obvious detrimental effects on the integrity inherent in the position held by all peace officers and seriously erodes the confidence bestowed upon each deputy, our department, and the law enforcement profession in general.

This incident is an example of conduct, which must be dealt with severely. To do otherwise opens the door to more serious transgressions, severely compromises public confidence in the organization and unnecessarily exposes the department to an unacceptable risk of liability.

My recommendation is the result of Deputy Garcia's behavior rising beyond any that might be remedied by less severe discipline. The criticality of Deputy Garcia's actions precludes the option of progressive discipline.

R. Banks #5003

R. Banks, Lieutenant-Detentions  
Vista Detention Facility

RB:rb

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TO R. G.

ENDORSEMENTS:

Ed Schroeder  
Ed Schroeder, Captain  
Vista Detention Facility

☒ Approve    ☐ Disapprove

Date: 9/7/2016

Comments: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_  
John L. Ingrassia, Commander  
Detentions Operations Area 2

☐ Approve    ☐ Disapprove

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

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\_\_\_\_\_  
Rich Miller, Assistant Sheriff  
Detentions Services Bureau

☐ Approve    ☐ Disapprove

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

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Mark Elvin, Undersheriff

☐ Approve   ☐ Disapprove

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

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\_\_\_\_\_  
William D. Gore, Sheriff

☐ Approve   ☐ Disapprove

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

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From the Office of

## ***INTERNAL AFFAIRS - CONFIDENTIAL***

### **ORDER NOT TO DISCLOSE MATERIALS**

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file, and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

Do not attempt to contact the complainant regarding the allegations, as this could result in future complaints. *"Retaliation is prohibited by state and federal law. We advise you to refrain from doing anything that may be construed as retaliation against the complainant or any witness involved in this investigation."*

I have received a copy of this order.

  
\_\_\_\_\_  
Fernando Garcia

IA# 2015-232.1

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From the Office of

**INTERNAL AFFAIRS - CONFIDENTIAL**

**Skelly Conference Letter**

**IA# 2015-232.1**

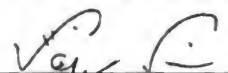
As indicated on the "Notice of Intent" to discipline, which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within five (5) regular business days. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (858) 974-2065.

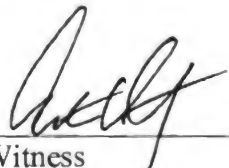
*If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.*

Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, that may be served upon you, either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.
2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape/digital recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.
3. To have sufficient time to review the supporting materials so that your response can be prepared.
4. To respond orally, in writing, or both to the proposed discipline and charges.
5. To a hearing officer who is not in your chain of command.
6. To have a representative or attorney present at the hearing.
7. To receive copies of all materials prepared as a result of the Skelly Conference.
8. To receive a new Skelly Conference for any new charges or increased discipline, which arise from the Skelly Conference.

I have read and understand my Skelly rights.

  
\_\_\_\_\_  
Fernando Garcia

 10-12-16  
\_\_\_\_\_  
Witness Date

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To: ES.

FROM THE OFFICE OF

**INTERNAL AFFAIRS – CONFIDENTIAL**

May 9, 2016

TO: Edwin Schroeder, Captain-Detentions  
Vista Detention Facility (N169)

FROM: Jeffrey S. Duckworth Lieutenant  
Internal Affairs Unit (O41)

**INTERNAL AFFAIRS CASE # 2015-232.1**

Please review this investigation and check where appropriate. When all action is completed, please return directly to the Internal Affairs Unit. DO NOT FORWARD THROUGH THE CHAIN OF COMMAND. This will be done by the Internal Affairs Unit. If you have any questions, please call (858) 974-2065.

- ☐ I concur with the Internal Affairs conclusions. No further formal action is recommended.
- ☒ I concur with the Internal Affairs conclusions. Discipline recommendation attached.
- ☐ I disagree with the Internal Affairs findings. See attached report.
- ☐ A procedural change is being written and an approved copy will be sent to Internal Affairs.

Signed Edwin Schroeder Date 9/7/14  
Edwin Schroeder, Captain-Detentions

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# SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

*Internal Affairs Unit*



INTERNAL AFFAIRS CASE 2015-232.1

ACCUSED EMPLOYEE:

[REDACTED]

Fernando Garcia, Deputy – Sheriff Detentions/  
CTSVC

COMPLAINANT:

San Diego County Sheriff's Department

INVESTIGATOR:

Sergeant Jill Farris

**CONFIDENTIAL**

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# SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

(Internal Affairs Unit)

**CASE NUMBER: 2015-232.1**

**ACCUSED EMPLOYEES:**

[REDACTED]  
Fernando Garcia, Deputy Sheriff – Detentions/CTSV

**COMPLAINANT:**

SDSO

**INVESTIGATOR:**

Sergeant J. Farris

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- A. Complaint Form and Attachments
- B. Synopsis, Analysis, Conclusions, and Findings by Sergeant J. Farris
- C. Witness list and Investigation by Sergeant J. Farris
- D. [REDACTED] SDLaw page, VDF Deployments, & Email from Medical Services
- E. Photos of: [REDACTED] injury, Video Surveillance, & Inmate Workers
- F. CD: Interviews, Video, and Photos

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San Diego County Sheriff's Department  
Post Office Box 939062  
San Diego, California 92193-9062



William D. Gore, Sheriff

COMPLAINT FORM

2015-232.1

PLEASE PRINT OR TYPE

COMPLAINANT'S NAME SDSO		DATE OF BIRTH	HOME PHONE
COMPLAINANT'S ADDRESS 325 S. Melrose Dr. STE 200	CITY Vista	ZIP CODE 92081	BUSINESS PHONE 760-940-4478
LOCATION OF INCIDENT Vista Detention Facility	CITY	DATE AND TIME OF INCIDENT 12-16-15 1930-2017 hours	
NAME(S) OF SHERIFF'S PERSONNEL [REDACTED] and Deputy Fernando Garcia #5713			
BRIEF NARRATIVE OF COMPLAINT On 12-16-15, at approximately 2017 hours, [REDACTED] used force while conducting laundry exchange in East House Module [REDACTED], which is occupied by Inmate [REDACTED]. During the course of the laundry exchange, it was observed on video footage, [REDACTED] striking Inmate [REDACTED] with his jail assigned cell keys. The video footage revealed [REDACTED] used the pointed end of the cell key, striking Inmate [REDACTED], twice on the top of his left hand, as it was laying flat on the food/service door. Deputy Garcia was present and witnessed this incident occur. Photographs were obtained of Inmate [REDACTED] left hand, which showed a puncture wound, where he was struck. No documentation was written or reported to his supervisors. Inmate [REDACTED] was not medically treated after force was used.			
<small>148.6 P.C. ADVISORY STATEMENT: YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATED TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS. IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.</small> <small>I have read and understand the above statement.</small>			
SIGNATURE OF COMPLAINANT:		DATE: 12/20/15	

INTERNAL AFFAIRS USE ONLY

EMPLOYEE RECEIVING COMPLAINT: Internal Affairs

DATE & TIME:

RECEIVED IN I.A. BY:

- ☐ IN PERSON  
☐ U.S. MAIL  
☐ MESSENGER MAIL  
☒ OTHER: fax

NATURE OF COMPLAINT: Use of Force

ASSIGN TO: IA - SGT. RAND FARRIS  
(DSB - VDF)

Received in  
Sheriff's Internal Affairs

DEC 21 2015

LA CASE #  
2015-232.1

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**INTERNAL AFFAIRS – CONFIDENTIAL**

Date: January 5, 2016

Complainant: SDSO

Date of Incident: 12-16-2015

Location of Incident: VDF

Allegation: Use of Force

Case No: 2015-232.1

TO: Deputy-Detentions/Ctsvc Fernando Garcia #5713  
Vista Detention Facility (N169)

This is to inform you that the Internal Affairs Unit has received a complaint regarding your conduct. The investigation of this complaint will be handled by SERGEANT-DETENTIONS J. FARRIS of the INTERNAL AFFAIRS UNIT. The investigator will contact you to arrange an interview.

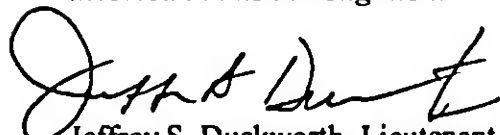
As a sworn member of this department, you should be aware of your rights contained in Government Code Sections 3300-3311 (Peace Officer's Bill of Rights) or contact an employee representative or attorney for advice.

The Department Policy and Procedure Manual also details your responsibilities during the investigation. Your attention is specifically directed to Sections 2.15 Insubordination; 2.38 Intervention; 2.41 Departmental Reports, and 2.46 Truthfulness.

You are hereby ordered not to disclose anything regarding this investigation with anyone other than your employee representative or legal counsel.

If you have any questions, please feel free to contact the Internal Affairs unit at (858) 974-2065.

Do not attempt to contact the complainant regarding the allegations, as this could result in future complaints. *"Retaliation is prohibited by state and federal law. We advise you to refrain from doing anything that may be construed as retaliation against the complainant or any witness involved in this investigation."*

  
Jeffrey S. Duckworth, Lieutenant  
Internal Affairs Unit

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**INTERNAL AFFAIRS – CONFIDENTIAL**

Date: January 5, 2016  
Complainant: SDSO  
Date of Incident: 12-16-2015  
Location of Incident: VDF  
Allegation: Use of Force  
Case No: 2015-232.1

TO: [REDACTED]

This is to inform you that the Internal Affairs Unit has received a complaint regarding your conduct. The investigation of this complaint will be handled by SERGEANT-DETENTIONS J. FARRIS of the INTERNAL AFFAIRS UNIT. The investigator will contact you to arrange an interview.

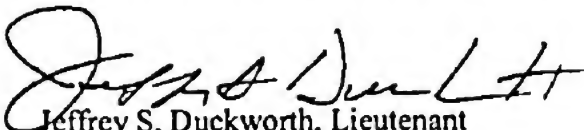
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Jeffrey S. Duckworth, Lieutenant  
Internal Affairs Unit

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FROM THE OFFICE OF

**INTERNAL AFFAIRS – CONFIDENTIAL**

January 5, 2016

IA# 2015-232.1

Commander-Detentions J. Ingrassia

RE:

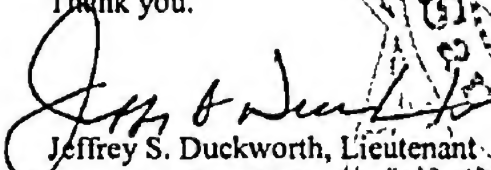
[REDACTED]  
Deputy-Detentions/Ctsvc Fernando Garcia #5713  
Vista Detention Facility (N169)

**NOTICE OF INVESTIGATION ASSIGNMENT TO INTERNAL AFFAIRS INVESTIGATOR**

The attached complaint has been assigned to Sergeant-Detentions J. Farris of the Internal Affairs Unit for investigation. You will be informed of the results upon completion of the investigation.

Should you wish to be briefed at any time, please feel free to call me at (858) 974-2065.

Thank you.

  
Jeffrey S. Duckworth, Lieutenant  
Internal Affairs Unit

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## THE SHERIFF'S CORPORATE DIRECTORY SEARCH RESULT

(Active Employees)

\* Home Phone number and Confidential phone number are viewable just by you and Comm Center Supervisors

Enter Partial Names:

Last:  First:   [Advanced Search](#)[Printer  
Friendly](#)

## GENERAL INFORMATION ( To update this information, click on the employee name )

Name:

Title:

NT User ID:

PeopleSoft ID:

ARJIS Number:

Desk Phone:

Cell Phone:

Pager No.:

Home Phone:

Confidential  
Phone:

Other:  
Phone:

Radio Unit:

Sheriff's Email:

Other Email:

Responsibility:

## LOCATION INFORMATION

## CURRENT WORK LOCATION

Dept. Name:

Mail Stop:

Location:

Address:

:

Telephone:

Fax:

## HR (PeopleSoft) ASSIGNED LOCATION

Dept. Name:

Mail Drop:

Location:

Address:

:

Telephone:

[Sheriff's Home](#) [Corporate Directory](#)

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## THE SHERIFF'S CORPORATE DIRECTORY SEARCH RESULT

(Active Employees)

\* Home Phone number and Confidential phone number are viewable just by you and Comm Center Supervisors

Enter Partial Names:

Last:  First:   [Advanced Search](#)[Printer  
Friendly](#)

## GENERAL INFORMATION ( To update this information, click on the employee name )

Name: Garcia, Fernando G  
Title: DEP SHERIFF - DETENTIONS/CTSVC  
NT User ID: fgarc1sh  
PeopleSoft ID: 016917  
ARJIS Number: SH5713  
Desk Phone: (760) 940-4483  
Cell Phone:  
Pager No.:  
Home Phone:  
Confidential  
Phone:  
Other:  
Radio Unit:  
Sheriff's Email: [Fernando.Garcia@sdsheriff.org](mailto:Fernando.Garcia@sdsheriff.org)  
Other Email:  
Responsibility:



## LOCATION INFORMATION

CURRENT WORK LOCATION	HR (PeopleSoft) ASSIGNED LOCATION
Dept. Name: Vista Detention Facility Mail Stop: N169 <a href="#">Show Driving</a> <a href="#">Directions</a> Location: Vista Detention Facility Address: 325 South Melrose Drive Suite : Vista CA 92081-6696 Telephone: (760) 940-4483 Fax:	Dept. Name: Vista Detention Facility Mail Drop: N169 Location: NCRC Jail Expansion Address: 325 S Melrose Ave : Vista CA 92081 Telephone: 760/940-4473

[Sheriff's Home](#) | [Corporate Directory](#)

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## NOTICE TO RETAIN NOTES

Deputy F. Garcia was interrogated pursuant to Government Code § 3303. He/she has a right to obtain copies of any reports or complaints at the conclusion of the investigation. Reports include all materials including your raw notes. I have noticed that you have tape recorded the interview and created raw notes. *San Diego POA v. City of San Diego*, (2002) 98 Cal. App. 4<sup>th</sup> 779, established that Government Code § 3303(g) requires the preservation and production of all material including raw notes that were obtained or created during the investigation. Penal Code § 135.5 prohibits any destruction or concealment of investigation materials.

Consider this notice a formal request under the authority of Government Code § 3303(g) and Penal Code § 135.5 to preserve any and all reports, materials and evidence, including raw notes, in the possession of your agency related to this investigation.

This notice should be retained in the file with other investigative documents.

Date: 03/03/16

Representative: L.A. Rios

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**SAN DIEGO COUNTY SHERIFF'S DEPARTMENT**

**INTERNAL AFFAIRS UNIT**

**INVESTIGATION REPORT**

**CONFIDENTIAL**

INTERNAL AFFAIRS CASE NUMBER: 2015-232.1

DATE: April 25, 2016

COMPLAINANT: SDSO

INVESTIGATOR: Sergeant J. Farris

**SYNOPSIS, ANALYSIS, CONCLUSIONS, AND FINDINGS**

**SYNOPSIS**

On December 16, 2015, it is alleged [REDACTED] used a jail issued key to strike an inmate's left hand through the open food flap during laundry exchange. [REDACTED] did not provide the inmate with medical attention, he did not write a report, and he did not inform his supervisor that he used force.

Deputy Fernando Garcia was present and witnessed the use of force; however, he also failed to report it to a supervisor. Furthermore, Deputy Garcia was untruthful during his first accused interview.

**ANALYSIS AND CONCLUSIONS**

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> Sanitation within Administrative Segregation housing was a serious problem that the staff has been directed to improve. They are to pick up trash often in order to improve living conditions for inmates who are unable to care for themselves.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**It is alleged Deputy Fernando Garcia saw [REDACTED] unreasonable force on Inmate [REDACTED] and failed to report it to a supervisor. Furthermore, Deputy Garcia was untruthful during his first Internal Affairs interview regarding what he saw.**

There is no dispute that Deputy Garcia did not report this incident to a supervisor, corporal, or training officer. What is in dispute is Deputy Garcia's perception of the force when it occurred. During Deputy Garcia's initial accused interview, I asked him if he remembered the event listed in the complaint. Deputy Garcia hesitated and did not answer. His representative asked for a more specific question. Therefore, I asked Deputy Garcia if he recalled [REDACTED] hitting an inmate on the hand with his keys. Deputy Garcia said, *"I remember him he had the keys and he was striking something but not hitting the inmate, um, directly, no."* Throughout the interview, Deputy Garcia denied he saw [REDACTED] hit the inmate with his key.

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Prior to Deputy Garcia's interview, I had the impression that this complaint came about because of the information he provided. Considering this incident occurred less than three months ago, and was a significant event to witness, I expected Deputy Garcia to have a clearer recollection. Deputy Garcia was vague, evasive, and provided little information during his interview. It became apparent that Deputy Garcia perceived if he did not see [REDACTED] hit the inmate's hand, his responsibility for reporting the incident to a supervisor was removed.

I learned Deputy Garcia told Deputy Maurice Womble what he observed and Deputy Womble reported it to their second level supervisor, Lieutenant Kevin McNeeley. I interviewed Deputy Womble and Lieutenant McNeeley as witnesses in this case. Both of them had a clear recollection of the events. Deputy Womble said Deputy Garcia told him that [REDACTED] "...took his key and hit the inmate with his, with the key on his hand to get him to go, to get him, to get his hand back inside..." Lieutenant McNeeley reported similar information. They were both unequivocal that Deputy Garcia saw [REDACTED] hit the inmate on his hand with his key. They both also thought it possible Deputy Garcia knew [REDACTED] sustained an injury.

I requested Deputy Garcia and his representative agree to a second accused interview. During that interview, I showed Deputy Garcia print screen photographs from the video footage. The photographs showed his location and vantage point of the incident. Deputy Garcia again attempted to be vague and misleading in his answers. After a five-minute break with his representative, Deputy Garcia finally admitted that he saw [REDACTED] hit the inmate's hand. Furthermore, he specified the key [REDACTED] may have used is for food flaps, which is larger than other jail keys. He also said [REDACTED] had red marks on his hand, but he did not know if they were already there. He denied that he saw [REDACTED] hand was bleeding. However, Lieutenant McNeeley told me he learned that [REDACTED] hand was bleeding.

Initially Deputy Garcia made excuses as to why he did not see [REDACTED] hit the inmate's hand. He blamed his eyesight, thought he was standing further away than he actually was, and suggested that he glanced but the incident happened too quickly for him to see. Deputy Garcia's initial stance that he did not see [REDACTED] hit the inmate may have been plausible had he not reported specific details to Deputy Womble within three days of the incident happening. Deputy Garcia also allegedly forgot that he talked to Deputy Womble, because he could not remember whom he spoke with during his first accused interview.

Deputy Womble told me that he and Deputy Garcia thought [REDACTED] conduct was inappropriate. In fact, Deputy Womble was resolute about the egregiousness of [REDACTED] actions and felt obligated to report the incident to Lieutenant McNeeley.

Deputy Garcia was initially deceitful and lied about [REDACTED] conduct toward inmate [REDACTED]. He attempted to cover up his inaction, and clearly made the decision not to report the incident to a supervisor when it happened.

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The following Sheriff's Department Policy and Procedures Section would be applicable to the above allegation:

### 2.30 FAILURE TO MEET STANDARDS

*Employees shall properly perform their duties and assume the responsibilities of their positions. Employees shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives of this Department. Failure to meet standards may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the employee's position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; absence without leave; unauthorized absence from the assignment during a tour of duty; the failure to submit complete and accurate reports on a timely basis when required or when directed by a supervisor.*

### 2.46 TRUTHFULNESS

*When asked by the Sheriff, the Sheriff's designee or any supervisor, employees will always answer questions, whether orally or in writing, truthfully and to the fullest extent of their knowledge. All written and verbal reports shall be truthful and complete.*

The burden of proof for an administrative case is a "preponderance of evidence" which is defined as "such evidence, when weighed with that opposed to it, has more convincing force and greater probability of truth." In weighing the facts of this case, it is apparent after [REDACTED] tried several times to secure the food flap to [REDACTED] cell, he became angry, and purposely struck [REDACTED] with the pointed end of the food flap key.

Based on all of the statements taken during this investigation, [REDACTED] was not attempting to harm [REDACTED] or threaten him. The video footage of [REDACTED] body language showed when he initially opened the flap he stepped back from the door. He walked up closer to the door, possibly to look in the window, but then he took a quick step back when [REDACTED] stuck his hand out of the opening. [REDACTED] stayed at a safe distance from the open flap even when he aggressively took the trash from [REDACTED] hand and threw it to the floor. Based on [REDACTED] strong aversion to open food flaps, his anger and annoyance toward [REDACTED], he intentionally took an unreasonable measure to defuse the situation. Based on the totality of the circumstances, [REDACTED] actions during this use of force were not within the confines of Addendum F—Use of Force.

Deputy Garcia was standing approximately seven feet away and witnessed the entire incident; however, he did not take proper action by reporting it to a supervisor. Furthermore, Deputy Garcia initially lied about [REDACTED] behavior. He also said he could not remember with whom he talked about the incident, or why he talked to them. At some point during Deputy Garcia's second accused interview, he gained clarity, and admitted he saw [REDACTED] hit the inmate. He also acknowledged he spoke to Deputy Womble telling Womble that he did not agree with [REDACTED] conduct and that [REDACTED] had an injury. Not only did Deputy Garcia fail to report this

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incident, he said he had no idea Deputy Womble was going to report it to a supervisor. Deputy Garcia is a tenured employee who should have known the proper reporting procedures and is expected to comply with the procedures. We expect Deputy Sheriffs to uphold the highest level of professionalism, exhibit self-control, be patient, and to treat incarcerated persons with dignity. It is for these reasons I came to the following findings:

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FINDINGS

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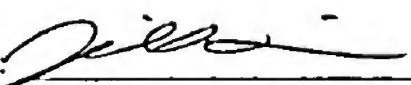
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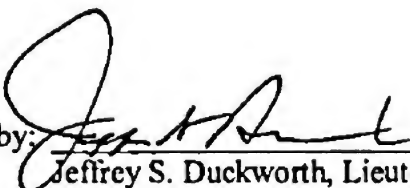
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## FINDINGS

This complaint against Deputy Fernando Garcia is **SUSTAINED** as it relates to Sheriff's Policy and Procedure Section 2.30 - **Failure to Meet Standards** in that on December 16, 2015, Deputy Garcia witnessed [REDACTED] use unapproved and unreasonable force on inmate [REDACTED] and did not report the incident to an immediate supervisor. Deputy Garcia's failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention was not in accordance with established departmental procedures.

This complaint against Deputy Fernando Garcia is **SUSTAINED** as it relates to Sheriff's Policy and Procedure Section 2.46 - **Truthfulness** in that on March 3, 2016, Deputy Fernando Garcia lied to Sergeant Jill Farris and Sergeant Ken Jones when he said he did not see his partner, [REDACTED] hit inmate [REDACTED] on the hand with his jail key. Deputy Garcia's failure to be forthcoming and truthful during his internal affairs interview was not in accordance with established departmental procedures.

Submitted by:  5/4/16  
Jill Farris, Sergeant-Detentions Date

Approved by:  5/9/16  
Jeffrey S. Duckworth, Lieutenant Date

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WITNESS LIST

Case # 2015-232.1

NAME	ADDRESS	TELEPHONE
Maurice Womble Deputy	325 South Melrose Ave. Vista, CA 92081	(760) 940- [REDACTED]
Kevin McNeeley Lieutenant	325 South Melrose Ave. Vista, CA 92081	(760) 940- [REDACTED]

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**SAN DIEGO COUNTY SHERIFF'S DEPARTMENT**

**INTERNAL AFFAIRS UNIT**

**INVESTIGATION REPORT**

**CONFIDENTIAL**

INTERNAL AFFAIRS CASE NUMBER: 2015-232.1

DATE: April 25, 2016

COMPLAINANT: SDSD

INVESTIGATOR: Sergeant J. Farris

**INVESTIGATION**

On December 21, 2015, Lieutenant Duckworth assigned this complaint to me for investigation. I reviewed the complaint form, accompanying video footage (Attachment F), and Jail Information Management System (JIMS) records as part of the investigation. I recorded all of the interviews in this investigation using a digital recorder, and I transferred the recordings to a CD-R disc. The Internal Affairs Unit will maintain the disc with the case file. This report contains a synopsis of said interviews (for exact and complete details refer to the digital recordings).

This allegation involves an unreported use of force, which prompted the department to file a complaint on December 20, 2015. The complaint states:

*"On 12-16-15, at approximately 2017 hours, [REDACTED] used force while conducting laundry exchange in East House Module # [REDACTED] Cell # [REDACTED] which is occupied by Inmate [REDACTED] BN [REDACTED]. During the course of the laundry exchange, it was observed on video footage, [REDACTED] striking Inmate [REDACTED] with his jail assigned cell keys. The video footage revealed [REDACTED] used the pointed end of the cell key, striking Inmate [REDACTED], twice on the top of his left hand, as it was laying [sic] flat on the food/service door. Deputy Garcia was present and witnessed this incident occur. Photographs were obtained of Inmate [REDACTED] left hand, which showed a puncture wound, where he was struck. No documentation was written or reported to his supervisors. Inmate [REDACTED] was not medically treated after force was used."*

On January 20, 2016, I reviewed the complaint and the applicable video footage. The sworn staff involved did not write any reports documenting this incident. The video surveillance system in the facility captured this incident from two angles. One camera is at the front of the dayroom, high on the wall, and adjacent to [REDACTED] cell door. The second camera is located across the dayroom, high on the wall, and much further from [REDACTED] cell. The video footage closest to [REDACTED] cell door was most beneficial for review.

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The video surveillance showed that on December 16, 2015, at approximately 2017 hours, Deputies Fernando Garcia and [REDACTED] conducted laundry exchange in East House, Module [REDACTED]. [REDACTED] approached cell [REDACTED] occupied by Inmate [REDACTED] who is an Administrative Segregation (Ad/Seg)<sup>1</sup> inmate. [REDACTED] was alone in the cell and was the last inmate in the module to receive laundry exchange. There were four inmate workers in the module that helped facilitate the exchanges.

When [REDACTED] approached cell [REDACTED] he looked inside briefly, opened the food flap, and stepped back from the door. Almost immediately, [REDACTED] stuck his entire arm out of the food flap opening and then pulled his arm back inside. After a few seconds, he rested his left hand on the open flap and kept it there for several seconds until [REDACTED] handed him clean laundry, which [REDACTED] accepted. As [REDACTED] was about to close the flap, [REDACTED] immediately put his left hand through the opening again. As [REDACTED] lifted up the flap, [REDACTED] extended his left hand out further, possibly to push down on the flap, thus holding it open. [REDACTED] let go of the flap and stepped back slightly.

[REDACTED] then used his right hand to push out (what appeared to be) an empty food tray. [REDACTED] took hold of the food tray, and it appeared he tried to push it back inside [REDACTED] cell. He eventually tossed the tray to the floor and then tried to lift up on the flap again. As [REDACTED] pushed more trash out, his right hand extended further through the opening, and in close proximity to [REDACTED] left palm. [REDACTED] then pulled his right hand inside the cell and his left hand remained rested on or above the flap.

[REDACTED] bent forward and clearly made two downward stabbing motions with his right hand above [REDACTED] left hand. After the first strike, [REDACTED] immediately pulled his left hand inside the cell, however his right hand had breached the opening to throw out another piece of trash. That piece of trash fell to the floor as [REDACTED] closed the flap. [REDACTED] locked the flap and walked a few feet away from the cell.

The pictures below show the moment just before [REDACTED] struck [REDACTED] left hand. [REDACTED] was bent forward and Deputy Garcia was approximately seven feet away.



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<sup>1</sup> Administrative Segregation (Ad/Seg) is for inmates who require special housing, separate from general population. Due to safety concerns resulting from [REDACTED] bizarre behavior and mental health needs, the deputies placed him in Ad/Seg.

"...Inmate [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



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**INTERVIEW OF INMATE [REDACTED]:**

On January 26, 2016, at approximately 1330 hours, I went to VDF and interviewed inmate [REDACTED]. I utilized an interview room located just outside of the secured area in East House. Sergeant Michael Andriso was present for the interview. I explained to [REDACTED] that I am a sergeant assigned to the Sheriff's Internal Affairs unit, and I wanted to speak to him about an incident. I told him I would record the interview and he agreed to speak with me. [REDACTED] was calm and articulate during the interview.

After I started the recorder, I told [REDACTED] I wanted to talk to him about laundry exchange the previous month when a deputy hit him on the hand. I asked him if he recalled that, and he said he did; however, he started talking about another incident. I believe he was speaking about an incident when the deputies took him out of his cell for Ad/Seg inspections,<sup>2</sup> and Sergeant Martinez took photographs of his hands. He then started talking about his arrest. I brought the conversation back to laundry exchange and told him it was when he threw trash out of his cell. [REDACTED] said when trash builds up he tries to get rid of it. I asked [REDACTED] if the deputy asked him to put his hands back inside the cell and at that moment [REDACTED] realized what I was talking about and said, "Oh yeah, yeah, I was hit by a deputy...and started to bleed, yeah."

I asked [REDACTED] if he knew who the deputy was, and he did not. I asked him if the deputy said anything to him before he hit him, and he said no. I asked [REDACTED] if he said anything to the deputy, and he said, "There was, there was, there was about three, I was wanting extra meals." I asked if the deputy responded or said anything back to him, and he said, "No, no he didn't say anything, he just mad that I, ah, had my hand out I was asking for extra food. I believe that was like almost a month and a half ago." I asked if he knew what the deputy hit him with and he said, "Ah, like a baton." He recalled there was another deputy present.

I asked [REDACTED] how his hand was now and he said it was fine. There was clearly scar tissue, purple in color, and in the shape of a circle on the top of his left hand. It appeared healed. He started talking about his arrest again and did not have anything further to add about the incident with [REDACTED].

I concluded the interview at 1333 hours.

**INVESTIGATION CONTINUED:**

Following my interview with [REDACTED], I met with some of the administrative staff at VDF to solicit their assistance in identifying the four inmate workers in the video. Inmate Worker Deputies Andrew Setter, Andrew Ramirez, and Administrative Deputy Matthew Creed viewed the video and attempted to identify the inmate workers. After they viewed the video several times, they were unable to identify any of the inmate workers. They suggested we show a small segment of the video to current inmate workers. These inmate workers viewed the video and

<sup>2</sup> Ad/Seg inspections are weekly and consist of the deputies removing an inmate from their cell so they can inspect it for cleanliness and/or maintenance issues. They remove contraband as well.

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speculated that three of the four inmates were possibly; [REDACTED] (released [REDACTED]), [REDACTED] (released [REDACTED]), and [REDACTED] housed at the East Mesa Reentry Facility (EMRF).

I asked Deputy Setter for an archived list of the inmate workers from December 16, 2015. He told me the list was disposed of recently. At this time, the staff retained the list for approximately one month, but the length of the list retention was changing soon. Without the list of workers, I did not have a positive way to identify who was in that module during laundry exchange on the evening of this incident.

On January 27, 2016, at approximately 1715 hours, I went to EMRF and spoke with inmate [REDACTED] in a private interview room located in House 4. I showed [REDACTED] "print screen" photos of the video footage from the laundry exchange and he adamantly denied he was one of the inmates in the photos. He said he worked in laundry, but did not participate in laundry exchange in East House. He also could not identify any of the other inmates in the photos. At that point, I ended my interview with him.

Due to the poor video quality, the lack of an official list of workers, and the unreliability of the current workers, I did not contact any further inmates for this case.

#### INTERVIEW OF ACCUSED EMPLOYEE DEPUTY FERNANDO GARCIA

On March 3, 2016, at approximately 1310 hours, I interviewed Detentions and Court Services Deputy Sheriff, Fernando Garcia in the Internal Affairs Conference Room located at 9621 Ridgehaven Court, San Diego, California 92123. Deputy Luis Rios was present as Deputy Garcia's representative during the interview. Internal Affairs Sergeant Ken Jones was also present.

Prior to the interview starting, I asked Deputy Garcia to review the four Rules of Conduct applicable to Internal Affairs investigations: Insubordination, Intervention, Department Reports, and Truthfulness. He understood the rules and was willing to follow procedures.

I read Deputy Garcia the Lybarger Admonishment, which included the Miranda Warning and the Garrity Warning, from a printed form. I ordered him to answer my questions fully and truthfully. Deputy Garcia agreed, and because of the order, I obtained the following statement. Deputy Garcia has worked for the Sheriff's Department for approximately 23 years. His assignment at the Vista Detention Facility, Team 4, has totaled about 15 years. Prior to the interview beginning, I showed Deputy Garcia the SDLaw eJIMS print out which displayed inmate [REDACTED] intake photo. I asked Deputy Garcia if he remembered [REDACTED], and he said, "Umm, not really. He doesn't look like that, no." I asked Deputy Garcia if he could describe [REDACTED] demeanor, and he could not. He just recalled that [REDACTED] was in Ad/Seg.

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Deputy Garcia acknowledged he worked as a rover in East House on December 16, 2015. I asked Deputy Garcia if he recalled the events described in the complaint. After a four-second pause he said, "Umm" and did not respond further. Deputy Rios asked, "Is there a more specific question?" I said, "Well do you remember, ah, [REDACTED] hitting inmate [sic] in the hand with keys?" Deputy Garcia said, "I remember him, he had the keys, and he was striking something but not hitting the inmate, um, directly no." I asked if he hit the inmate, and he said no. I asked if he remembered what he saw, and he said, "He, well he was standing in front of the door, and he had his keys on; he was stabbing at something but no, I didn't see him directly hitting him."

I played the video and asked Deputy Garcia to narrate what he recalled. He said he remembered doing laundry exchange, and he described the module as rowdy and houses inmates with psychiatric issues who are very unkempt. I asked him what he remembered when they arrived at [REDACTED] cell. After he watched the video he said, "I saw trash coming out of the flap that's it, that's it."

I played the video again and pointed out that [REDACTED] had his left hand out. Deputy Garcia said,

*"Right okay, I didn't, I mean, I saw he tapped something but I didn't like directly to him, I mean because he was pushing out the trash the inmate and then plus I didn't have my eye glasses with me I don't think so, so I wasn't like..."*

I asked Deputy Garcia if he cannot see far away, and he said, "No, sometimes I cannot see far away, I don't know if I had my glasses, that's it." I asked him if they spoke to each other after [REDACTED] made the stabbing motion. He said, "He said he was, ahhh, trying to hold the food flap hostage." I asked if they talked or if he (Deputy Garcia) said anything to [REDACTED] and he said no. I asked him if he asked [REDACTED] why he did that, and he said no. Deputy Garcia told me he asked [REDACTED] what happened, and [REDACTED] told him the inmate was trying to hold the food flap hostage.

Deputy Garcia said he did not see [REDACTED] make contact with the inmate's hand. He said he saw [REDACTED] tap "something" and he saw the trash coming out of the inmate's cell. I told Deputy Garcia the video showed him and [REDACTED] lingering around the cell. Deputy Garcia said he looked into the inmate's cell to see how dirty it was. Afterward they continued their shift and did not talk about it.

Deputy Garcia said he looked into the cell to see who the inmate was and how filthy his cell was. He was curious since they were doing laundry exchange and not collecting trash. Sergeant Jones asked Deputy Garcia if he knew the key hit the inmate's hand and he said no. He said he did not see any blood or bruises, and when he looked in the window, the inmate was away from the door. I asked Deputy Garcia that when [REDACTED] made the stabbing motions, if he heard metal hit metal and he said, "...kind of, kind of, I heard something like that yes..."

I asked Deputy Garcia if he talked to anyone about this incident, and he could not recall. He said he "probably" said something to someone about the inmate holding the food flap hostage and the "tapping with the keys," but he could not remember. He looked at the shift deployment and did

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not believe he spoke to anyone he worked with that night. He said if someone asked him what happened he probably told him or her the inmate was holding the food flap hostage. Sergeant Jones immediately asked Deputy Garcia why he would have brought that up, and Deputy Garcia said he saw what he saw.

At this point, Sergeant Jones pointed out to Deputy Garcia if all he saw was [REDACTED] hitting the food flap with his keys, why did Deputy Garcia talk about it with another deputy. Deputy Garcia responded, "Not sure." He said he did not seek out another person because he did not see [REDACTED] hit the inmate on the hand.

I asked Deputy Garcia if he spoke to [REDACTED], and he said no. I asked him if [REDACTED] told him that he hit the inmate's hand, and he said no. I asked him if [REDACTED] mentioned he was going to write an ISR or RVR, and he said no. He said [REDACTED] did not seem concerned about documenting what occurred.

Deputy Garcia said he does not know [REDACTED] well, and [REDACTED] is not an Ad/Seg deputy. I showed Deputy Garcia the photos of [REDACTED] hand. I told Deputy Garcia the skin was punctured and bled. Deputy Garcia said he did not see that.

I told Deputy Garcia it was my understanding that someone reported this incident to a supervisor. I asked him if anyone in the deputy's station discussed it or briefed the next shift that [REDACTED] attempted to take the food flap hostage, and he said no. He did not believe [REDACTED] said anything to anyone. Deputy Garcia told me he did his rounds the rest of the shift, and the inmate never spoke to him or reported to him that he had an injury. I asked if someone else could have witnessed the incident, and he did not know.

Deputy Garcia said the movements happened very quickly. He said he saw the "tapping," and he saw [REDACTED] close the food flap quickly. He glanced over. I asked him if he recognized the "tapping" as a use of force, and he said no.

I asked Deputy Garcia again about his sight issue and he said he has progressive lens so that he can see far and close. He said he sometimes wears his glasses during checks.

I showed Deputy Garcia several thumbnail photos of inmate workers during the time this incident took place and asked him if he recognized any of them. Deputy Garcia did not recognize any of them and essentially said the picture quality was too poor.

Deputy Garcia had nothing further to add and I concluded the interview with an advisement against retaliation and an order not to disclose at 1343 hours.

**INVESTIGATION CONTINUED**

After my interview with Deputy Garcia, I called the Vista Detention Facility to speak with Lieutenant McNeeley. Lieutenant Banks answered and informed me that Lieutenant McNeeley was on a different team. She was aware Deputy Garcia was at Ridgehaven for an interview and

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told me she was familiar with [REDACTED] case. I told her I needed to know which deputy reported this incident to Lieutenant McNeeley. Lieutenant Banks told me it was Deputy Maurice Womble. Deputy Womble was at work; therefore, I went to VDF to interview him.

After I gathered my belongings in preparation to depart for VDF, I put my digital recorder in my handbag. At some point while I walked around Ridgehaven the record button activated. It recorded for approximately five minutes before I noticed it and turned it off. It recorded the sound of me walking around the building and the parking structure.

### INTERVIEW OF WITNESS, DEPUTY MAURICE WOMBLE

On March 3, 2016, at approximately 1511 hours (on recording I said 1311 hours but that was incorrect), I interviewed Deputy Maurice Womble in the Administrative Sergeant's office at the Vista Detention Facility located at 325 South Melrose Drive Suite 200, Vista, California. I recorded the interview and made Deputy Womble aware that I was recording.

Prior to the start of this interview, I asked Deputy Womble to review the four Rules of Conduct applicable to Internal Affairs investigations: Insubordination, Intervention, Department Reports, and Truthfulness. He understood the rules and was willing to follow procedures.

Deputy Womble has worked for the San Diego Sheriff's Department for approximately nine years. He has worked on Team 4 at VDF for approximately four years.

I explained to Deputy Womble that I was aware he knew about an incident between [REDACTED] and inmate [REDACTED]. I asked him to explain to me what he knew. He told me he was not working in East House when this incident happened; however, he is one of the deputies who rotate through Ad/Seg regularly. He said Deputy Garcia was working in East House and told him about an incident during laundry exchange when an inmate threw out trash instead of his laundry.

From what Deputy Womble explained, he and Deputy Garcia discussed this incident and tried to rationalize what happened. Deputy Womble told me he did not know if the inmate's actions upset [REDACTED]. Deputy Womble said Deputy Garcia told him [REDACTED] did the following:

*"...took his key and hit the inmate with his, with the key on his hand to get him to go, to get him to get his hand back inside...he thought it was wrong we just discussed it...I mean that's not right...I'm not sure why (I believe he meant when) I told Lieutenant McNeeley but I don't think it was that day. I just didn't feel right about it, I don't think deputies should be doing that...so I reported it to McNeeley..."*

Deputy Womble could not remember when he reported it to Lieutenant McNeeley, but he knew it was during the five-day deployment. He knew the incident occurred on the first day of their five-day deployment.

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I asked Deputy Womble if he remembered the wording Deputy Garcia used to explain [REDACTED] actions. Deputy Womble said, "...he thought that [REDACTED] was upset the guy threw trash out..." He told me Deputy Garcia did not know what was going on because he was doing laundry at another cell. He said Deputy Garcia heard [REDACTED] yell at the inmate to get his hands back in, and then he saw [REDACTED] hit [REDACTED] with the key.

I asked Deputy Womble if Deputy Garcia used the term, "tapped him" or that the inmate was trying to "hold the flap hostage" and he said no, Deputy Garcia did not say that. He said Deputy Garcia said the inmate did not know what was going on, and Deputy Womble acknowledged that they have tried to "train" the inmates to throw out their trash<sup>3</sup>. Deputy Womble thought the inmate believed it was time to throw out trash. He said [REDACTED] does not work in Ad/Seg often and was not used to the routine. The inmate throwing out trash may have caught [REDACTED] off guard and caused confusion.

I asked Deputy Womble if Deputy Garcia told him about this incident because he was just relaying something that happened or because he did not feel right about it, and Deputy Womble said, "He didn't feel right about it either, he didn't think it was right." I asked him if he was positive that Deputy Garcia knew [REDACTED] hit the inmate's hand and he said, "Yes." Deputy Womble said from what Deputy Garcia told him, he was sure he hit the inmate's hand and not just the flap.

Deputy Womble was not sure if anyone else witnessed this incident. He said for the control deputy to have seen it they would have to stand at the window and be looking directly in. He said the control station is very busy.

I concluded the interview with an order not to disclose at 1517 hours.

#### INTERVIEW OF WITNESS, LIEUTENANT KEVIN MCNEELEY

On March 7, 2016, at approximately 1713 hours, I interviewed Lieutenant Kevin McNeeley in the Watch Commanders' office in the Vista Detention Facility located at 325 South Melrose Drive Suite 200, Vista, California. I recorded the interview and made Lieutenant McNeeley aware that I was recording.

Lieutenant McNeeley was familiar with the four Rules of Conduct applicable to Internal Affairs investigations: Insubordination, Intervention, Department Reports, and Truthfulness. He understood the rules and was willing to follow procedures.

Lieutenant McNeeley has worked for the San Diego Sheriff's Department for approximately 20 years. He was on Team 4 at VDF for approximately eight months and recently moved to Team 1.

<sup>3</sup> VDF has had cleanliness issues with the Administrative Segregation inmates who are gravely disabled. They have tried to institute a routine for these inmates to throw out their garbage when the deputies come to their cells and open the flaps.

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I asked Lieutenant McNeeley to relay to me the information he had regarding this case. He told me on December 18, 2016, Deputy Maurice Womble was in his office and they were talking. During their conversation, Deputy Womble asked him if he heard what [REDACTED] did in East House. Lieutenant McNeeley had not heard. Deputy Womble proceeded to tell him what happened. Lieutenant McNeeley told me,

*"[REDACTED] struck an inmate housed in cell # [REDACTED] by the last name of inmate [REDACTED] with the pointed end of his keys on his left hand a couple a times."*

Lieutenant McNeeley said Deputy Womble told him the following:

*"...you wouldn't believe what this guy did...he hit him with the keys...he was even bleeding...he went and looked to see that he [REDACTED] was actually injured...Deputy Garcia even questioned [REDACTED] as to why did you do this, why did you do that, is what he said to him and [REDACTED] response was, that, well he he was pushing his trash out the food flap..."*

I asked Lieutenant McNeeley if Deputy Womble said that [REDACTED] "tapped" the inmate with his keys, and he said no. I asked if Deputy Womble told him the inmate tried to take the food flap hostage, and he said no.

Lieutenant McNeeley did not know if [REDACTED] sustained an injury because of this incident. He requested that the following shift escort [REDACTED] to the medical area for the jail nursing staff to examine him. Lieutenant McNeeley knew the dayshift was responsible for conducting hygiene inspections in the Ad/Seg modules, and that would be the perfect time to take [REDACTED] out. Once the deputies had [REDACTED] in the medical area, Sergeant Jose Martinez took photographs of the injury on his hand. [REDACTED] refused to allow the nursing staff to tend to the wound.

Lieutenant McNeeley had nothing further to add and I concluded the interview with an order not to disclose at 1724 hours

#### INVESTIGATION CONTINUED

After I interviewed Deputy Womble and Lieutenant McNeeley, it was apparent Deputy Garcia's memory of the incident was much clearer when it occurred. Based on the discrepancies from his accused interview and the information Deputy Womble told me, I arranged for Deputy Garcia to have a second accused interview. I prepared print-screen images of the video footage during the crucial moments of this incident to show Deputy Garcia during the interview.

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**SECOND ACCUSED INTERVIEW OF DEPUTY FERNANDO GARCIA**

On March 9, 2016, at approximately 1044 hours, I re-interviewed Deputy-Detentions/Ctsvc Fernando Garcia in the Internal Affairs Conference Room located at 9621 Ridgehaven Court, San Diego, California 92123. Deputy Luis Rios was present as Deputy Garcia's representative during the interview. Internal Affairs Sergeant Tina Tejeda was also present.

Prior to the interview starting, I asked Deputy Garcia to read the four Rules of Conduct applicable to Internal Affairs investigations: Insubordination, Intervention, Department Reports, and Truthfulness. He understood the rules and was willing to follow procedures. I reminded Deputy Garcia of the Lybarger Admonishment, to include the Miranda Warning and the Garrity Warning. I ordered him to answer my questions fully and truthfully. Deputy Garcia agreed and because of the order, I obtained the following statement.

Deputy Garcia explained his team has four to five deputies who rotate through the Ad/Seg modules. He is one of those deputies, and he knew [REDACTED] was not one of those deputies. He said Deputy Womble was also one of the Ad/Seg deputies.

I asked Deputy Garcia if he recalled talking to Deputy Womble, and he said after our last interview he thought about it. He said, "...I think I mentioned something to him..." I assured Deputy Garcia that he did talk to Deputy Womble, and I had spoken to Deputy Womble.

I informed Deputy Garcia that Deputy Womble did not feel right about this incident. Sergeant Tejeda asked Deputy Garcia what he remembered from his conversation with Deputy Womble. Deputy Garcia said Deputy Womble was not working with him that night. He told Deputy Womble that [REDACTED] had an altercation with an inmate in cell [REDACTED] but he could not remember what he said word for word. He told Deputy Womble the inmate was pushing trash out of his cell and [REDACTED] "tapped on him" to get him to put his hands back inside the cell. Deputy Garcia said he told Deputy Womble he was not quite sure if [REDACTED] hit the inmate or not. He said he might have told him that he struck the inmate's hand. Deputy Garcia said he did not think about this incident again until his first interview with me. Sergeant Tejeda asked him if [REDACTED] was injured, and he said there was not broken skin.

At this point, I explained to Deputy Garcia that we were going to look at screen shot photos of the video footage and go moment-by-moment. I told him I was going to incorporate Deputy Womble's information, the video, and the physical evidence.

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Photo 1



This photo is just after [REDACTED] gave [REDACTED] clean clothes through the food flap. When he attempted to lift up and close the flap [REDACTED] stuck his left hand out. Deputy Garcia acknowledged he was not paying attention to cell [REDACTED] at this time. Video showed he was not looking toward cell [REDACTED]. Deputy Garcia did not know how long [REDACTED] was at cell [REDACTED] or that the inmate had his hands out of the flap the majority of the time.

Photo 2



This picture depicts Deputy Garcia's attention drawn to cell [REDACTED]. His body is leaned to the left, leading one to believe he was peering to see around the trustee in front of him. According to Deputy Womble, Deputy Garcia heard [REDACTED] yell at [REDACTED] to put his hands back inside. Deputy Garcia said he could not remember if he heard [REDACTED] yell. I asked him if he heard someone yell, and he said, "Probably...I'm not sure."

Photo 3



This picture shows [REDACTED] pushing trash out of the food flap. Deputy Garcia acknowledged he saw the trash come out. I asked Deputy Garcia if the inmate was being malicious and trying to throw trash at [REDACTED], and he said no. He said the inmate did not seem concerned with what [REDACTED] was doing there. He did not hear [REDACTED] make any comments at all.

According to Deputy Womble, Deputy Garcia said the inmate did not know what was going on.

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Photo 4



This photo depicts [REDACTED] raising his hand above [REDACTED] hand to hit it. I pointed out to Deputy Garcia that he was standing in full view of the cell, there were no obstructions, and he had not turned away. I asked Deputy Garcia if he saw [REDACTED] hit the inmate on the top of his hand and he said, "...it was so fast...I know [REDACTED] had an angry face, I remember that part..."

Sergeant Tejeda asked Deputy Garcia to estimate how far from the flap he was. He thought maybe seven feet. She asked him to explain how he did not see the strike. Deputy Garcia had a very difficult time answering that question. Deputy Rios asked to take a break. Sergeant Tejeda and I stepped out of the room while Deputy Rios and Deputy Garcia took an approximate five-minute break.

We went back on recording at 1116 hours. I said, "...Sergeant Tejeda was asking you if you saw [REDACTED] hit the top of the inmate's hand." Deputy Garcia lowered his head and said, "Yes." I told him I believed [REDACTED] hit the inmate's hand twice. At first, he said he did not remember. Then he said, "...probably hit him once or twice." He confirmed [REDACTED] hit [REDACTED] with the "D key" (which is used to open the food flaps) and it is approximately six inches long.

Photo 5



This photo depicts when Deputy Garcia lifted his head and followed behind [REDACTED]

According to Deputy Womble, Deputy Garcia asked [REDACTED] why he did that. [REDACTED] told him it was because the inmate pushed trash out.

Deputy Garcia told me when he spoke to [REDACTED] he asked him, "What happen, what's wrong." and [REDACTED] told him, "He was trying to hold the food flap food flap hostage." Deputy Garcia demonstrated [REDACTED] face as twisted as if he were annoyed or mad. I told Deputy Garcia I understood he was accustomed to this type of module, whereas [REDACTED] was not. Deputy Garcia said [REDACTED] has a "short fuse."

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Deputy Garcia could not remember word for word what he told Deputy Womble regarding his reaction to [REDACTED] behavior, however he said, *"I disagree with his conduct."* Sergeant Tejada asked Deputy Garcia if he spoke to [REDACTED] after this incident, and he said he did not.

Photo 6



This photo shows Deputy Garcia looking in [REDACTED] cell. The first time Deputy Garcia went to the window there was shadow movement inside the cell. This leads one to believe it was possible [REDACTED] was still near the cell door.

According to Lieutenant McNeeley, Deputy Garcia told Deputy Womble the inmate was bleeding. Deputy Garcia told me he was certain the inmate was not bleeding. He said the inmate had red marks but did not have broken skin. Sergeant Tejada asked Deputy Garcia why he looked inside the cell, and he said to see who the inmate was. Eventually Deputy Garcia admitted he looked to see if the inmate had an injury as well.

Deputy Garcia could not recall if he asked the inmate if he was all right or not. The last photo I showed Deputy Garcia was of him looking in the cell again eight seconds later. I asked if the inmate was bleeding, and he said no. He could not recall where the inmate was inside the cell. Sergeant Tejada asked him why he went back, and he said, *"Can't remember why I went back. Probably make sure if he was okay....in my mind, I gotta take care of these inmates, that's it."* I asked Deputy Garcia if he talked to [REDACTED] between the two times he looked inside the inmate's cell and he said, *"No."*

I told Deputy Garcia that Deputy Womble told me he and [REDACTED] talked after this incident. Deputy Garcia could not recall everything he told Deputy Womble. I asked him if he told Deputy Womble that [REDACTED] hit an inmate with his keys and he said, *"Probably I did yes."* I asked him what they discussed, and Deputy Garcia said he told Deputy Womble that [REDACTED] had an incident with an inmate and hit the inmate's hand one to two times. Deputy Garcia said Deputy Womble might have misconstrued what he said because he did not see any blood. He said the inmate's hand was red, bruised, and he acknowledged that the inmate was injured.

I asked Deputy Garcia if he and Deputy Womble discussed telling a supervisor about the incident and he said no. He said Deputy Womble never brought it up and he had no idea he planned to tell a supervisor about it. I told Deputy Garcia that Deputy Womble did not feel right about what [REDACTED] did. Deputy Garcia said his conversation with Deputy Womble was

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very brief and more of an "in passing" conversation. I asked Deputy Garcia if he thought what [REDACTED] did was right and he said, "No."

I explained to Deputy Garcia that this second interview was to clarify questions that remained unresolved from the first interview. I asked him if he had anything to add. Deputy Garcia said, after the first interview, he went home and realized he spoke to Deputy Womble since he was also an Ad/Seg deputy. Deputy Garcia explained that he did not know anything about this investigation until he heard from me (about arranging his first accused interview). He did not recall where he was standing when the incident took place until he saw the video.

Deputy Garcia had nothing further to add. I concluded the interview with an advisement against retaliation and an order not to disclose at 1149 hours.

### INVESTIGATION CONTINUED

On March 17, 2016, I contacted Sergeant Lorena Vidaurri and confirmed that [REDACTED] did not notify her or her partner Sergeant Jose Estrada about his use of force. On March 25, 2016, I went to VDF to interview Deputy Martin Souki and Corporal Julia Breer as witnesses in this case. Both worked in East House the day this incident occurred. When I explained to each of them why I was there, both stated they did not witness the incident or have any knowledge of it. Deputy Souki, who was working as the control deputy, said [REDACTED] did not mention anything to him. He said normally partners talk to each other right away if they have a problem with an inmate. Due to neither deputy having pertinent information to provide to this case, I did not conduct a full interview with them.

[REDACTED]

On March 30, 2016, at approximately 1000 hours, I interviewed [REDACTED] in the Internal Affairs Conference Room located at 9621 Ridgehaven Court, San Diego, California 92123. Attorney [REDACTED] was present as [REDACTED] representative during the interview. Internal Affairs Sergeant Art Ortiz was also present.

Prior to the interview starting, I gave [REDACTED] a copy of the complaint form and the SDLaw print out with [REDACTED] photograph. I asked [REDACTED] to read the four Rules of Conduct applicable to Internal Affairs investigations: Insubordination, Intervention, Department Reports, and Truthfulness. He understood the rules and was willing to follow procedures.

I explained to [REDACTED] that I would read the Lybarger Admonishment, to include the Miranda Warning and the Garrity Warning. I ordered him to answer my questions fully and truthfully. [REDACTED] agreed, and because of the order, I obtained the following statement.

[REDACTED] has worked for the Sheriff's Department for [REDACTED]. He started his career at the San Diego Central jail and then transferred to VDF about a year and a half ago. He said

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there are three deputies on his team that regularly work in Ad/Seg housing. He is not one of those deputies.

██████████ acknowledged he worked as a housing rover in East House on December 16, 2015. He said East House has three modules for Ad/Seg housing and three modules for Protective Custody (P/C). I asked ██████████ if he recognized inmate ██████████, and he did. I asked him to describe ██████████ demeanor, and he said ██████████ is "...crazy..."

I asked ██████████ to tell me about the complaint and explain what he remembered. He did not recollect what they were exchanging, but recalled he was opening food flaps. When he got to ██████████ cell,

*"I opened the food flap and then I remember him like throwing trash or something outside the flap, um, and then his hands came out grabbed on to the flap. I instructed him like once or twice put your hands back inside the flap. He didn't. I still had my keys in my hand, I reared back like I was going to strike him but as a ruse, cause of, you know, basically I'm going to hit you, you know with my keys or something to that effect um, to gain his compliance since he wouldn't listen to me, um, his hands didn't come back inside the cell I came down once or twice. Apparently, I struck him in the left hand, um, his hands went back inside the cell. I closed the flap and carried on."*

At this point, I played the video and asked ██████████ to narrate what happened. I indicated the event was a laundry exchange and asked him if he recalled if Deputy Garcia was present. He recognized Deputy Garcia. I asked him if he spoke to ██████████ when he was at his door, and he recalled announcing white rolls (laundry). He said when he tried to close the flap, ██████████ stuck out his hand. When he tried to close it again, ██████████ started throwing out trash, and then he said, "...that's where I hit him."

I asked ██████████ if ██████████ was speaking to him or asking him for anything, and he said no. I asked if he was threatening him or yelling, and he said, *"I mean (audible sigh) maybe, no, I don't know. But that's the part that worries me, is that, I'm trying to close the flap he keeps putting his hands out trying to keep it open."* I asked if he thought ██████████ heard him say to put his hands inside. He said he told him loudly, however the module is very noisy; e.g., the televisions may be loud and/or other inmates are yelling loudly.

I told ██████████ I did not see the action he described, regarding him rearing back, to act as if he was going to strike ██████████. Instead, it appeared to me that he was there and ██████████ hand was "all the way out." I asked ██████████ if he hit ██████████ in the hand and he said, "Yes." I asked him if felt hitting ██████████ hand and he said, *"I don't remember feeling his hand, I don't remember feeling metal, I don't remember feeling anything."*

Chris Kowalski asked ██████████ if he intended to strike ██████████ hand and ██████████ said, *"No, I did not intend to strike him."* Therefore, I asked ██████████ what he was aiming for when he did that, and he said he was not aiming at anything. He thought when his hand came

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down it would scare [REDACTED] into pulling his hands inside. I told [REDACTED] it looked like he aimed for [REDACTED] hand. I said he could have kicked the door or banged on the door, but he aimed for [REDACTED] hand. [REDACTED] laughed and said,

*"I don't believe kicking the door would have gained his compliance, um, hitting the door with my key I don't think would have gained his compliance it was the idea of me striking him in the hands that was going to gain his compliance, in my mind. So if I was going to hit him in the ha (I believe he was about to say hand), hit him anywhere the only thing that was keeping me from closing the food flap which was what I was trying to do was his hands. So I'm not going to reach into the cell or anything like that."*

I asked [REDACTED] if hitting [REDACTED] hand was an accident, and he said, "Yup. Yes." I asked him how many times he made the downward motion and he said at least once, maybe twice. He said his memory of the incident was not how it looked on the video. He thought he went backward and then came down. I showed him the other camera angle and explained he went from taking the trash from [REDACTED] to bending over and striking him. [REDACTED] said he meant his actions as a ruse to scare [REDACTED] and I said, "...but you followed through with the ruse and actually hit him" and he said, "Yes."

I asked [REDACTED] what Deputy Garcia said to him after this occurred. [REDACTED] remembered talking to Deputy Garcia but did not remember what he said. After they spoke, he just went about his shift. I said Deputy Garcia saw what happened and looked in at the inmate and asked again if he remembered talking to Deputy Garcia. [REDACTED] said, "Not really, no." Sergeant Ortiz asked [REDACTED] if they talked any time during the shift, and he did not remember. He said he recalled telling the next shift to watch out for [REDACTED] "...because he likes to take the food flap hostage..."

I asked [REDACTED] if he was aware that [REDACTED] was injured, and he said no. He did not check on [REDACTED] other than security checks. He said if he knew he had hit [REDACTED] there would have been obvious signs of trauma. Sergeant Ortiz asked [REDACTED] if anyone, including [REDACTED], reported that [REDACTED] was injured. [REDACTED] said if the inmate reported it to him he would have followed up in accordance proper procedures.

I asked [REDACTED] what he was looking at when he thought of the ruse and he said the food flap. I asked if he looked in the cell window to see what [REDACTED] was doing and if [REDACTED] was holding the flap open while he gathered more trash. [REDACTED] said he could have been doing that or he could have been getting ready to, "...shank me..." I asked him if he thought [REDACTED] had a weapon and he said, "I always assume that they have a weapon, yes." I asked him if he had any implication that [REDACTED] had a weapon, and he said no. He added he had no forewarning the last time an inmate "shanked" him. I asked if [REDACTED] had a history of this behavior, and he said he did not know. I asked if [REDACTED] threatened him and he said, "No." I asked [REDACTED] if [REDACTED] had one or two hands out when his hand came down. He said on the video it was just [REDACTED] left hand but he remembered seeing both of [REDACTED] hands. [REDACTED] said even though he may have been aiming at [REDACTED] hands when he made the

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downward motions, his intention was not to hit [REDACTED] hand. However, he agreed he came down toward [REDACTED] hands.

I asked [REDACTED] if the department approved the use of keys as an impact weapon and he said no. He said the keys were in his hand and he did not think about it. I asked him if he has done this before and he said, "No." I asked if this was the first time he has hit or almost hit an inmate with keys and he said, "Yes."

I asked [REDACTED] if he had other options in this situation and he said, "Yes. Um, retreated and called a supervisor." He said his team received training today (March 30, 2016) about this very scenario and the instructor said to call a supervisor. I asked him what other options he had and he said OC and/or verbal commands.

I asked [REDACTED] if [REDACTED] seemed to know what was going on in the module (since they were doing laundry exchange and he failed to throw out his dirty laundry), and [REDACTED] said he thought [REDACTED] thought it was nice that he was giving him laundry. I asked him if [REDACTED] asked anything of him, and he did not recall.

I asked [REDACTED] to read Department Policy Section 2.48 Treatment of Persons in Custody. I asked him if he violated this section and he agreed he did by striking [REDACTED] with his keys. I asked him to review Department Policy Section 2.49 Use of Force. He agreed he violated this section by not writing a report. I asked him if he was familiar with Addendum F and his responsibility to report uses of force to a supervisor. He said he was familiar with Addendum F, and he did understand.

I showed [REDACTED] the pictures of the injury to [REDACTED] hand. His face became red and he put his head in his hands. Chris Kowlaski asked me if we knew the key caused the injury and I told him yes. He asked me how we knew that, and I told him because [REDACTED] partner witnessed him use the key to cause the injury.

I asked [REDACTED] if he wanted to say something on his own behalf, and he did not respond. Chris Kowlaski asked [REDACTED] how he felt about the incident, and [REDACTED] said, "Bad." [REDACTED] became quiet. I said this was his opportunity to explain what was going through his mind when this happened, and he said,

*"...I don't leave food flaps open, um, reason being Day 1, Phase 2, I was shanked through a food flap in an Ad/Seg module downtown with an inmate that had no reason to, um, didn't have any signs that he was going to. Everything was totally code 4 with the guy, put him back inside the cell, popped the food flap next thing I know he stabs me in the arm and is trying to gut me. That's why I don't leave food flaps open."*

I asked [REDACTED] if he wished to address anything else in the complaint and he said no.

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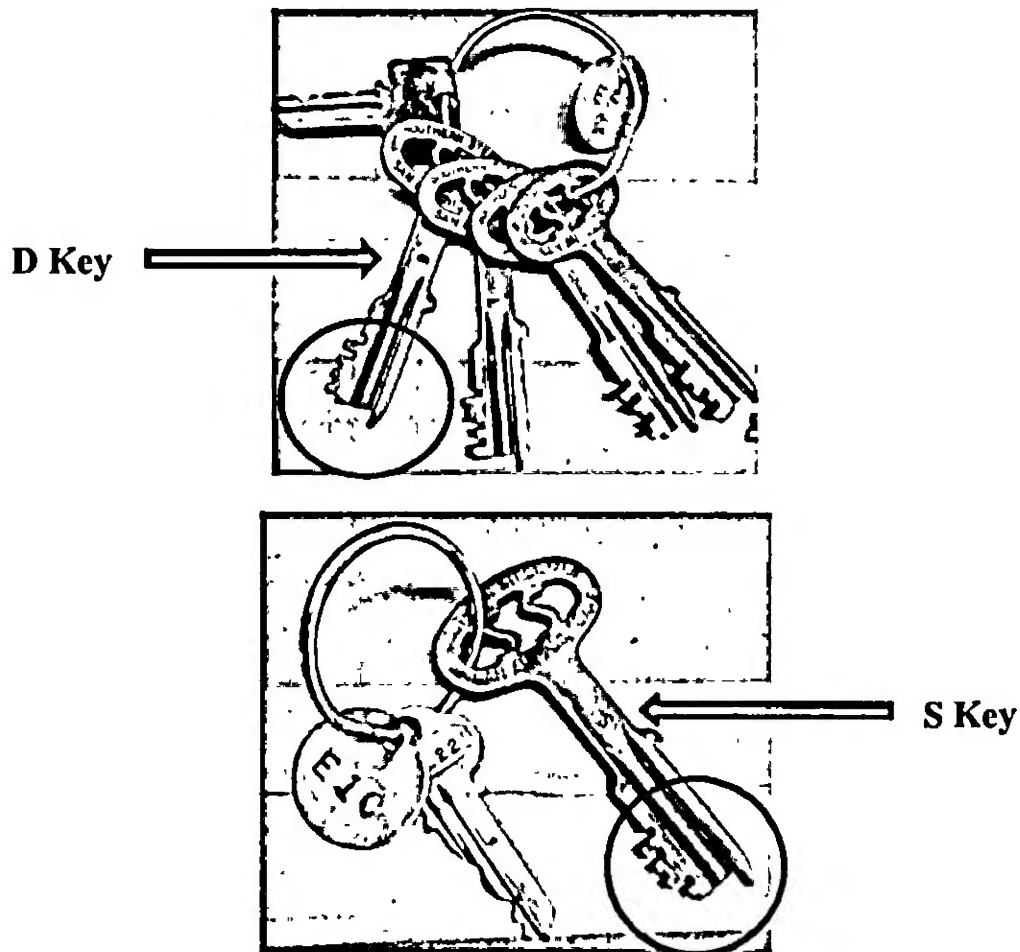
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Investigation  
April 25, 2016

I had nothing further to ask; therefore, I concluded the interview with an advisement against retaliation and an order not to disclose at 1031 hours.

**INVESTIGATION CONTINUED:**

On April 25, 2016, I requested Sergeant Daniel Dennis take photographs of the East House "D key." Sergeant Dennis explained the "S key" is used to open food flaps in East House, however as seen in the photos on the next page, the D and S keys are very similar.




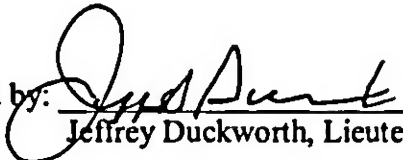
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Submitted by:  5/6/16  
Jill Farris, Sergeant Date

Approved by:  5/9/16  
Jeffrey Duckworth, Lieutenant Date

JSD:jrf

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## San Diego Sheriff's Department Inmate Detail Report



## PERSONAL

Last: [REDACTED]  
 First: [REDACTED]  
 Middle: [REDACTED]  
 Sex: [REDACTED]  
 DOB: [REDACTED]  
 Age: [REDACTED]  
 Birth Place: [REDACTED]  
 SSN: [REDACTED]  
 RI System #: [REDACTED]  
 Gang Flag: [REDACTED]  
 Inmate Loc.: IN - Lock Down  
 DNA Status: Completed  
 Citizenship: [REDACTED]  
 Foreign: N  
 Notify: [REDACTED]  
 Language: UNK  
 English: Unknown  
 Ability: [REDACTED]  
 Race: [REDACTED]  
 Hair: [REDACTED]  
 Eyes: [REDACTED]  
 Height: [REDACTED]  
 Weight: [REDACTED]

Booking photos are not public records,  
 and may not be released to the public or  
 media except as authorized by Sheriff's  
 policy. Booking photos are provided by  
 the San Diego County Sheriff's  
 Department to your agency through  
 SDLaw with the expectation that they  
 will remain confidential, and not be  
 disclosed to anyone outside of your  
 agency. Copies of booking photos may  
 be available pursuant to subpoena.



JIM [REDACTED]  
 Bk #: [REDACTED]  
 Class: [REDACTED]

## ARRESTS: 1

Arr. Agency: San Diego Sheriff Office

Arr. Location: [REDACTED]

Officer: BERT

Officer ID: 4956

Arr. Date: [REDACTED]

Agency Case #: [REDACTED]

Custody Days: [REDACTED]

Booking Date: [REDACTED]

Booking Time: 11:41:45

Jail: Vista Detention Facility

Area/III/Cell: E/4/15

Holds:

Arrest Type:

Date Released:

Release Type:

Projected Release Date:

Sentenced?: No

## Bail Information:

Not Eligible For Release, No Bail

Remarks (1st Arr): [REDACTED]

## CHARGES

Arr	Arrest Date	Chg	Section	Code	Description	Court Case	Bail Amount	Flag	Dispo. Type	Dispo. Date/Time	RC
1	[REDACTED]	1	[REDACTED]	PC	[REDACTED]	[REDACTED]	\$0.00	N	1	[REDACTED]	FP

## COURT

Appearance	Destination Court	Date	Time	Arrest
1	[REDACTED]	[REDACTED]	08 00 00	1
2	[REDACTED]	[REDACTED]	09 00 00	1

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# VISTA DETENTION FACILITY

NIGHT SHIFT

Team 4

DAY: WEDNESDAY (5)

Date: 12/16/15

1800-0630

SECURITY STAFFING

MIN STAFFING 28

ACTUAL STAFFING

27

ABSENCE/REASON REPLACEMENT

*WATCH COMMANDER	LL McNeeley, K. #4378		
*SECURITY SERGEANT	Sgt. Vidaurre, L. #4760		MED-Briefing
*PROCESSING SERGEANT	Sgt. Estrada, J. #2695		IPD-Briefing
01. *CONTROL	Conner, J. #0271 LE	LD/2.5 EA (WRKD)	
02. *CONTROL RVR #1 (HOSP GRD)	Genel, A. #4341 (B)		
03. *MEDICAL	Durr, E. #4729		(MDG/EOH)
04. *MEDICAL/ INT RVR	Delima, B. #0682 (CPL)	SPT	Taylor, M. #5558
05. *MALE INTAKE	Schaefer, B. #0278 LE		
06. *SEARCH GATE	Navarro, J. #4884 (B)	2.5 LA (WRKD)	(VBS SME)
07. *SEARCH/ PRINT #1	Burkey, F. #0271 (CPL)		
08. *SEARCH/ PRINT #2	Davis, M. #0190 LE		
09. *FEMALE INTAKE	Crain, C. #4041 (FXCPL)		(VBS SME)
10. *INTAKE ROVER	San Nicolas, A. #7842	2.5 LA (WRKD)	
11. *LOWER WEST HOUSE	Dailly, J. #4702		
12. *LOWER WEST RVR #1 (VETL)	Roelens, C. #2702		
13. *LOWER WEST RVR #2 (IBHL)	VACANT	107	Lopez #5600/ Angulo #3062
14. *SOUTH HOUSE	Olsen, C. #6798 (CPL)		
15. *SOUTH RVR #1	Gibson, D. #5262		
16. *SOUTH RVR #2 (KITCHEN)	Nagy, A. #2917 TTD	TTD	Landwehr #3577 (1830-0001)
17. *EAST HOUSE	Souki, M. #3291 (L/D)	LD	
18. *EAST RVR #1	Garcia, F. #5713 (B)		
19. *EAST RVR #2	Breer, J. #3280 (FXCPL)		
20. *EAST RVR #3			
21. *NORTH MALE HOUSE	Magallanes, R. #0498		
22. *NORTH FEMALE HOUSE	Perez, J. #7067 (F)	LD	
23. *NORTH RVR #1	Dwyer, S. #0208 LE		
24. *NORTH RVR #2 (FEMALE)	Hopson, K. #3305 (F)		
25. *NORTH RVR #3	Womble, M. #5710		
26. *UPPER WEST HOUSE	Islip, M. #0154 LE		
27. *UPPER WEST RVR #1	Belay, K. #0040		
28. *UPPER WEST RVR #2	VACANT	107	McCurdy, M #8935 (1800-0500)
LINE UP TRAINING			

W/C SIGNATURE: \_\_\_\_\_

Deputy Overtime	41.5
2.5 Overtime hours	7.5
Sergeant Overtime	
Totals	49

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# VISTA DETENTION FACILITY

NIGHT SHIFT

Team 4

DAY: SATURDAY (5)

Date: 12/19/15

1800-0630

SECURITY STAFFING

MIN STAFFING 28

ACTUAL STAFFING

24

		ABSENCE/REASON	REPLACEMENT
*WATCH COMMANDER	Lt. McNeeley, K. #4376		
*SECURITY SERGEANT	Sgt. Estrada, J. #2695		Med-Briefing
*PROCESSING SERGEANT	Sgt. Vidauri, L. #4760		IPD-Briefing
01. *CONTROL	Souki, M. #3291 (L/D)	LD	
02. *CONTROL RVR #1 (HOSP GRD)	Roelens, C. #2702	VAT	Santana #2557/TCH 15782083
03. *MEDICAL	Durr, E. #4729		(MDG/EOH)
04. *MEDICAL/INT RVR	Nagy, A. #2917 TTD	TTD	No Replacement
05. *MALE INTAKE	Genel, A. #4341 (B)	2.5 EA (WRKD)	
06. *SEARCH GATE	Dwyer, S. #0206 LE		(VBS SME)
07. *SEARCH/ PRINT #1	Olsen, C. #6798 (CPL)		
08. *SEARCH/ PRINT #2	Davis, M. #0190 LE		
09. *FEMALE INTAKE	Hopson, K. #3305 (F)		(VBS SME)
10. *INTAKE ROVER	Breer, J. #3280 (F)(CPL)		
11. *LOWER WEST HOUSE			
12. *LOWER WEST RVR #1 (VETL)	Dailly, J. #4702		
13. *LOWER WEST RVR #2 (IBHL)	Magallanes, R. #0498	CTT	Smith, A. #0242
14. *SOUTH HOUSE	Delima, B. #0682 (CPL)		
15. *SOUTH RVR #1		107	Wagner, J. #3259
16. *SOUTH RVR #2 (KITCHEN)	Crain, C. #4041 (F)(CPL)	CTL	Landweher, L. #3577 till 0000
17. *EAST HOUSE	Womble, M. #5710		
18. *EAST RVR #1	Gibson, D. #5262		
19. *EAST RVR #2	Garcia, F. #5713 (B)		
20. *EAST RVR #3	San Nicolas, A. #7842		
21. *NORTH MALE HOUSE	Belay, K. #0040		
22. *NORTH FEMALE HOUSE	Perez, J. #7067 (F)	LD/2.5 LA(WRKD)	
23. *NORTH RVR #1	Navarro, J. #4864 (B)		
24. *NORTH RVR #2 (FEMALE)	Isip, M. #0154 LE	MTL	No Replacement
25. *NORTH RVR #3	Schaefer, B. #0278 LE		
26. *UPPER WEST HOUSE	Conner, J. #0271 LE	LD	
27. *UPPER WEST RVR #1	Burkey, F. #0271 (CPL)	2.5 EA (WRKD)	
28. *UPPER WEST RVR #2		107	Bass, F. #6550
LCDRF Trans	Gonzalez #15782088 & Holley #15781787		Caporaso 0123 & Reibelling 3839
LINE UP TRAINING			

W/C SIGNATURE: \_\_\_\_\_

Deputy Overtime	43
2.5 Overtime hours	7.5
Sergeant Overtime	
Totals	50.5

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**Farris, Jill**

---

**From:** Macatula, Liza  
**Sent:** Wednesday, January 20, 2016 5:17 PM  
**To:** Farris, Jill  
**Cc:** Booth, Nancy  
**Subject:** RE: Inmate [REDACTED]

Hi Sgt.,

Per JIMS review, IP presented to nurse sick call clinic on 12/19/15 for wound check of left hand following cell extraction. Inmate was described as being agitated and becoming increasingly upset for the duration of the assessment due to being handcuffed. Per nursing staff's note, unable to complete wound assessment or clean wound due to inmate's behavior. Brief observation of the wound on left hand dorsum with no swelling noted, minimal redness noted and able to make a fist. Inmate refused vital signs. Follow-up wound check scheduled.

On 12/22/15, refusal slip with 2 witnesses noted for nurse sick call visit. Re-scheduled for wound follow-up.

On 12/23/15, noted documentation of inmate refusal to go to nurse sick call clinic. Inmate was counseled at cell side with staff attempting to re-check on wound but inmate did not want to get up from bed.

12/24/15, refused nurse sick call clinic.

12/25/15, nursing staff attempted to assess wound at cell side. Inmate uncooperative, only letting staff visualize right hand which is not the correct extremity with the wound. No additional re-scheduling done at that time.

Please let me know if you need additional information. Thanks.

Liza

-----Original Message-----

**From:** Farris, Jill  
**Sent:** Wednesday, January 20, 2016 1:27 PM  
**To:** Macatula, Liza  
**Subject:** Inmate [REDACTED]

Hello!

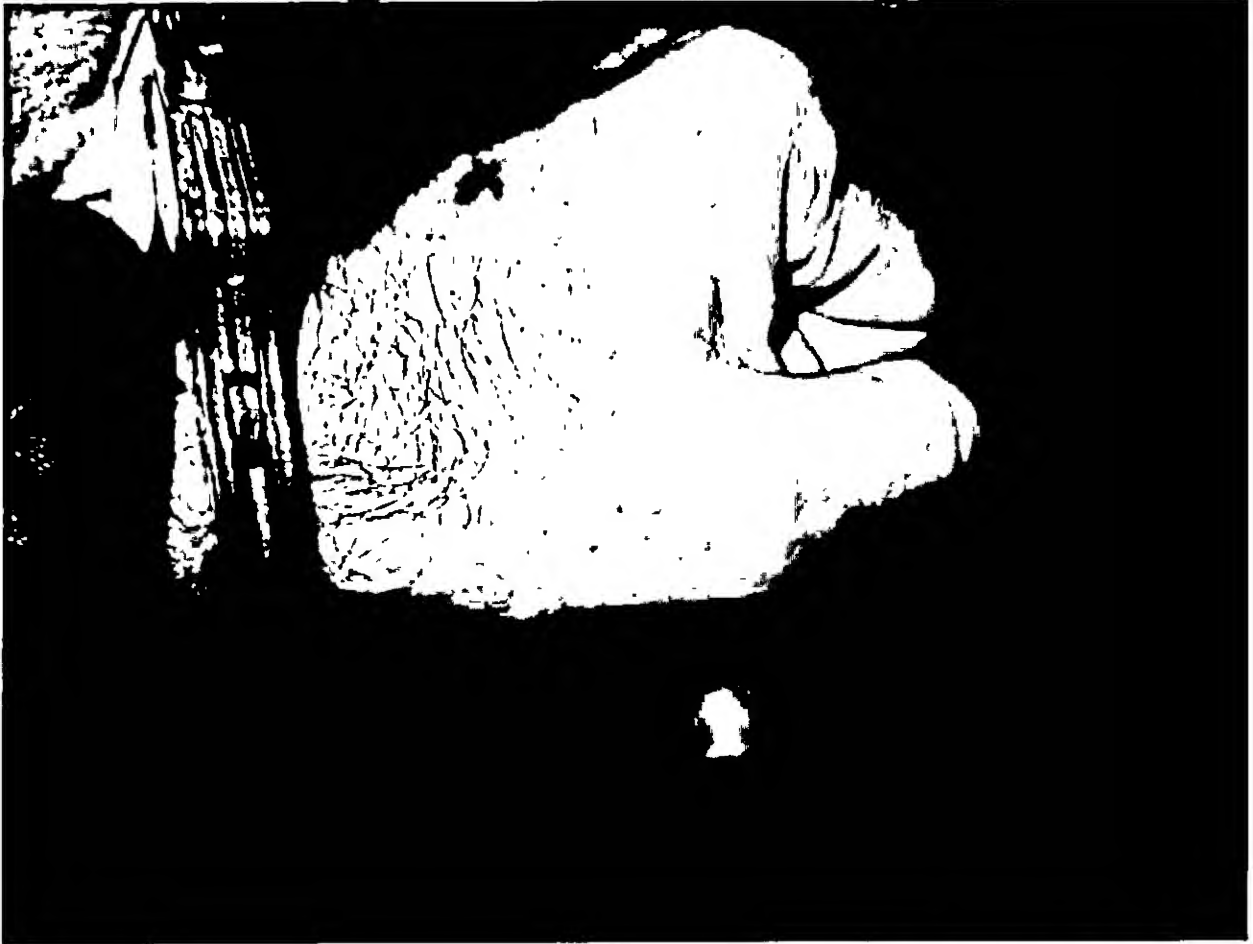
Can you tell me if [REDACTED] was examined by medical staff, and what the results were, after being struck on the top of his left hand December 16, 2015? Please and thank you! :)

Jill

Jill Farris, Sergeant  
Internal Affairs  
9621 Ridgehaven Court  
San Diego, CA. 92123  
Desk: (858) [REDACTED]

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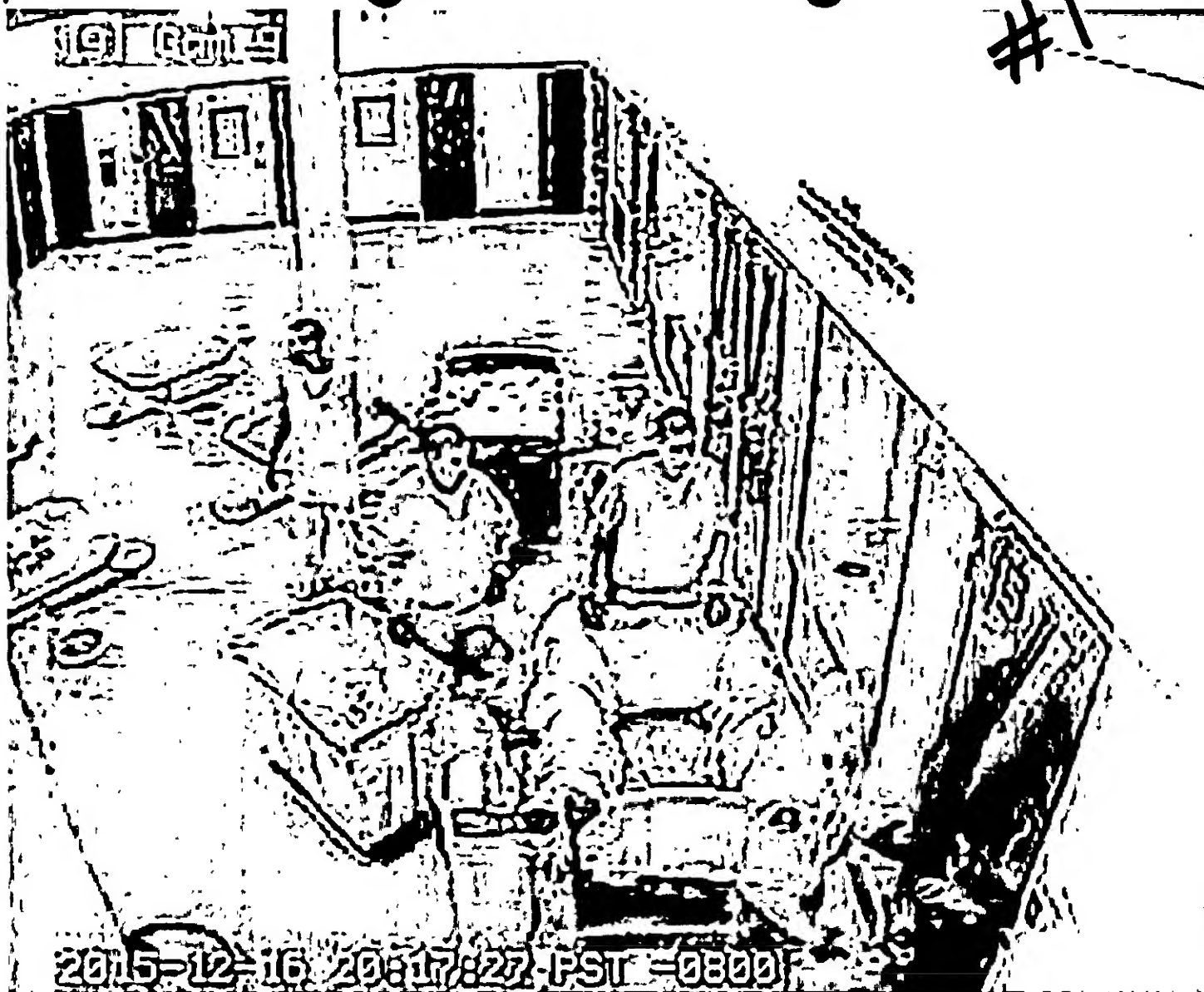
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TO ASD



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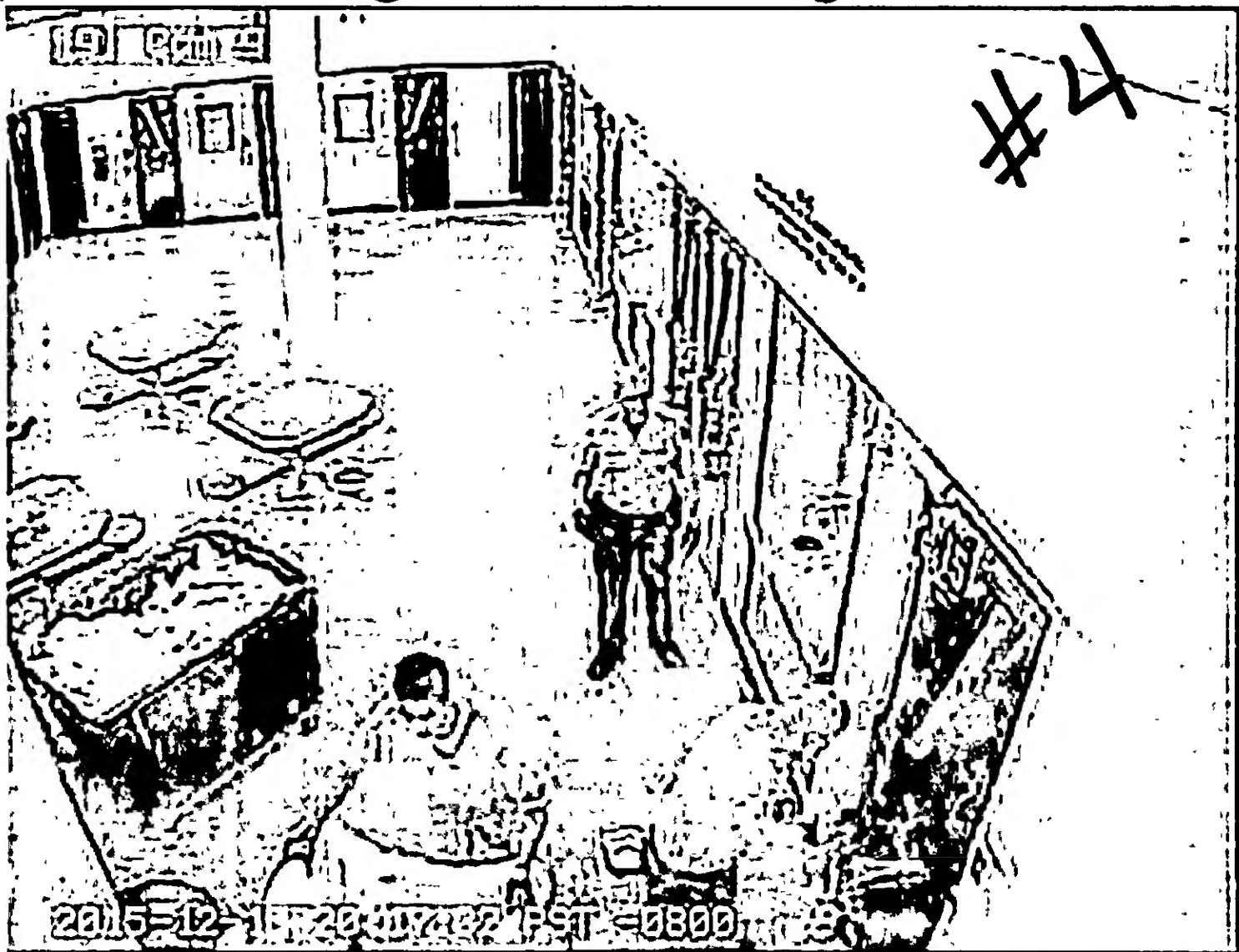
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TO FCJ

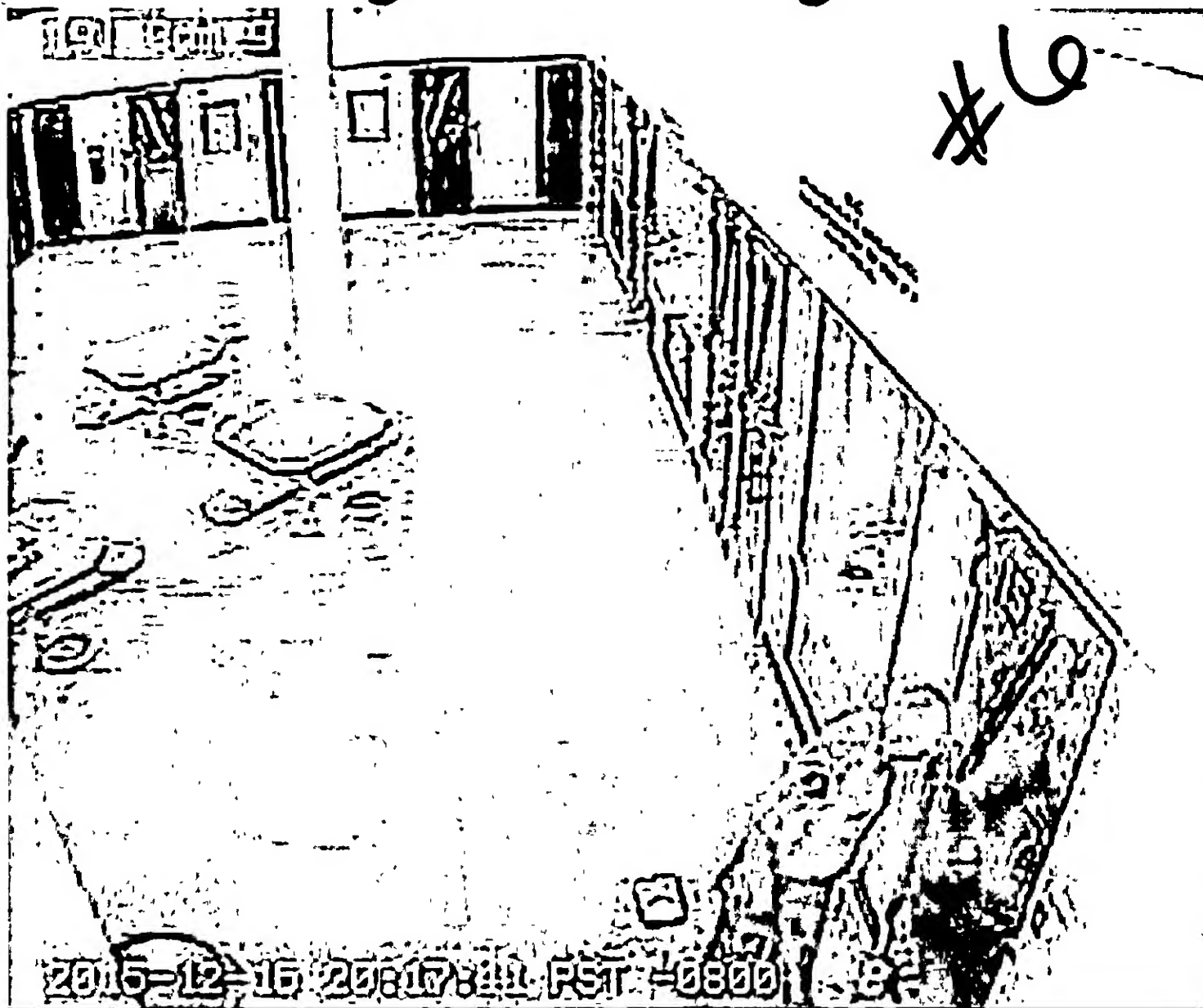
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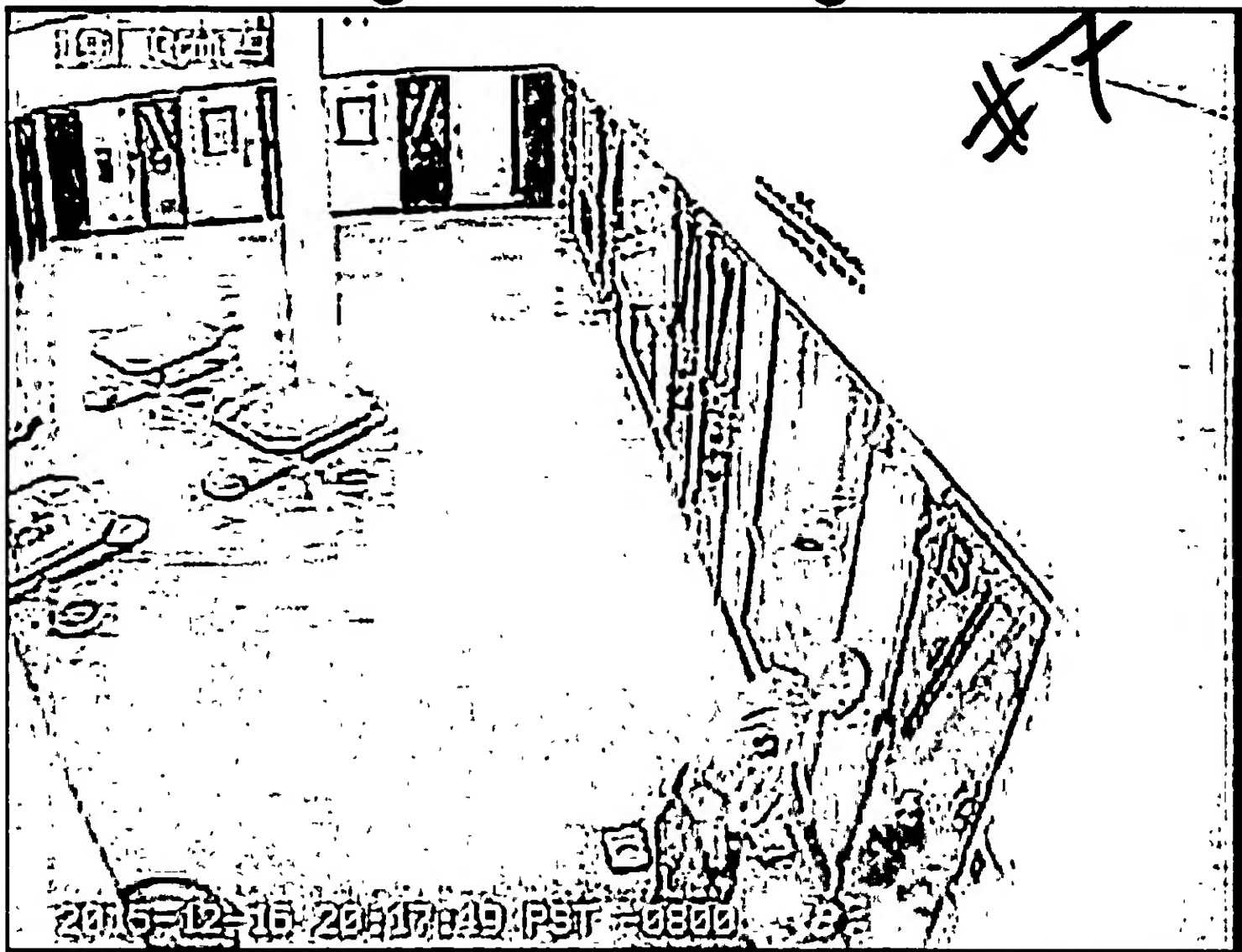
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TO ASD



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TO ASD



Run Date: 14-DEC-2015

Run Time: 08:36

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Lg 9 2



XL-9 2



Lg 9 3



XL-11 2



2x-9 3

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RELEASED FROM  
I.A. FILES  
TO ASO



Run Date: 16-DEC-2015  
Run Time: 09:11

Note: If barcode is not visible you may need to contact HelpDesk to have them install 3 of 9 Barcode Font on your PC. You can also print inmates' wristband inserts from Mugshot station.

[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]

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I.A. FILES  
TO FG.RELEASED FROM  
I.A. FILES  
TO ASD



Run Date: 15-DEC-2015

Run Time: 10:15

S-3

Note: If barcode is not visible you may need to contact HelpDesk to have them install 3 of 9 Barcode Font on your PC. You can also print inmates' wristband inserts from Mugshot station.



XL-10



XL-11



XL-11



XL-11



XL-10



XL-9



XL-10

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TO FCJ

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